

Confidentiality, information and your loved one

For loved ones of people living with mental illness

There are rules about when healthcare and other professionals can give you information about your loved one. This factsheet explains what these rules are. This information is for loved ones and carers of adults affected by mental illness in England. It's also for anyone interested in this subject.

Key Points.

- Professionals can normally only share information about your loved one if your loved one agrees.
- In some situations, a professional can share personal information without your loved one's consent.
- Professionals should listen to you if you are concerned or want to give them information about your loved one.
- Your loved one can sign a consent form so professionals can share information with you.
- Your loved one could fill out an advance statement or advanced decision. This can explain who they want to share their information with if they lose mental capacity.

This factsheet covers:

1. [What is confidentiality?](#)
2. [When can a professional share information without consent?](#)
3. [Can a professional share information with me about my loved one?](#)
4. [Can I give information about my loved one to a professional?](#)
5. [My loved one is under the Mental Health Act and I'm the nearest relative. What information can I get about them?](#)
6. [What arrangements can my loved one make for the future?](#)

Key words

In this factsheet, the words below mean the following things.

Your loved one means the person that you want information about. You could be their carer, friend or relative.

Professional someone who works in health or social care, or other services that support those living with mental illness. This can include a:

- psychiatrist,
- psychologist,
- GP,
- social worker,
- nurse,
- housing officer,
- probation officer, or
- advocate.

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1. What is confidentiality?

Confidentiality is about keeping your personal information private.

Professional shouldn't tell anyone else information about you, or what you have said, unless:

- you agree, or
- they have another good reason. See [section 2](#) of this factsheet for more information on when professionals can share your information without your consent.

Information that professionals should keep confidential includes:

- details about your mental health,
- details about your physical health,
- your name, date of birth and contact details,
- things you have told professionals,
- details about things like your ethnic group or background, sexuality, gender, or religious beliefs,
- details about your treatment and care, and
- your written records.

What is NHS or social services sharing information under 'implied consent'?

NHS and social services professionals can share information about your loved one with other NHS and social care staff. They can do this without your loved one's consent if the staff directly support or care them. They can do this under what they call 'implied consent'.^{1,2}

Implied consent means circumstances in which it would be reasonable to think that they would agree to the information being shared.³

An NHS service can only share your loved one's information under implied consent if:⁴

- they have not objected to this,
- information is available to your loved one saying how their information will be used. And that they have the right to object to information sharing, and
- the person who receives the information understands they are receiving it in confidence, and they respect this.

Before social services professionals share your loved one's information under implied consent, they should make sure that:⁵

- it is necessary to provide the information to the person receiving it,
- they only disclose the information that is relevant, and
- the professional receiving the information understands why they are receiving it. And that they have a duty to keep it confidential.

Your loved one can tell social services or an NHS service if they don't want them to share information about them with staff who care for them. They then shouldn't share the information unless one of the reasons apply in [Section 2](#) of this factsheet.^{6,7}

Can professionals share my loved one's information with other services?

Professionals should get consent from your loved one before they share confidential information with other types of services. Such as the police or your loved one's employer.⁸

What if my loved one finds it difficult to give consent?

Your loved one may find it difficult to give consent for their information to be shared. This may be due to a disability or mental illness.

Professionals must take care to talk to your loved one in a way that is suitable for their needs.⁹ If they don't, they may be discriminating against your loved one by not providing them with a reasonable adjustment.¹⁰

You can find more information about:

- Confidentiality
- Discrimination and mental health

at www.rethink.org. Or call our General Enquiries Team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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2. When can a professional share information without consent?

A professional can sometimes share personal information without consent. This is called 'breaching confidentiality'.¹¹

A breach in confidentiality can happen for these reasons.

- When it is in the public's interest or to protect the public. For example, a professional shares information with the police or other professionals as they think your loved one might be a risk to themselves or other people.¹²
- When they have to because a court or a piece of law says they must.¹³
- If your loved one lacks mental capacity to make their own decisions. But they can only share your loved one's information if it is in their best interests.¹⁴

It is unlawful for a professional to breach confidentiality without good reason.¹⁵ Your loved one could take legal action against them.

You can find more information about '**Mental capacity and mental illness – The Mental Capacity Act 2005**' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask us to send you a copy of our factsheet.

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3. Can a professional share information with me about my loved one?

Professionals can't usually share information with you about your loved one's treatment or care if your loved one doesn't give consent.¹⁶ This is because professionals must protect your loved one's confidentiality.

But professionals should make sure that your loved one understands the benefits of sharing information with family and carers.¹⁷

Your loved one might think sharing information with you could help with their care. You can also talk to your loved one about these benefits. These may be:

- that you know your loved one's crisis plan,
- that you know your loved one's care plan, or
- you know what treatment they're getting for their condition.

This may make you more able to care for and support your loved one.

Professionals should regularly talk to your loved one about sharing information with carers, friends or loved ones. This is to make sure that your loved one has a chance to decide if they want their information to be shared.

When your loved one is very unwell they might not consent to professionals sharing information with you. But as they start to recover, they might see the benefit and change their mind.

Your loved one can give consent for the professionals to share all, or some, of their information with you. At the end of this factsheet there is a [template consent form](#). Your loved one can fill this out and give it to their healthcare teams.

You might find it stressful if your loved one won't give consent to share information with you.

You can get more information about '**Stress – How to cope**' at www.rethink.org. Or call our General Enquiries Team 0121 522 7007 and ask them to send you a copy of our factsheet.

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4. Can I give information about my loved one to a professional?

The General Medical Council (GMC) make guidelines for medical professionals. Their guidelines say that professionals shouldn't refuse to listen to a carer, friend or relative's concerns because of confidentiality.¹⁸ This is because the information could help with your loved one's care.

The guidelines also say that medical professionals should:¹⁹

- think about whether your loved one would consider their listening to your comments as a breach of trust. Especially if your loved one has told the professional not to listen to you, and
- tell you that they might need to tell your loved one that they have listen to your concerns. Especially if it has influenced their assessment and treatment of your loved one.

But, if your loved one hasn't given consent, professionals won't be able to:

- discuss your loved one's care or treatment with you, or
- tell you whether they plan to do anything with your information.

A professional might say they need to share the information you give with your loved one.²⁰ You might worry that this will affect your relationship with your loved one. You could ask that any information you share is used as sensitively as possible. You could explain that this is needed to protect your relationship.

You might find that a professional won't speak to you if you try to give information about your loved one. If this happens, you could write down your concerns in a letter or email. This might make it harder for them to ignore.

5. My loved one is under the Mental Health Act and I'm the nearest relative. What information can I get about them?

If your loved one is detained under the Mental Health Act 1983, you may be their nearest relative. The nearest relative is a term that is in the Mental Health Act, which is the law.

The nearest relative isn't always the same person as your loved one's next of kin.

The nearest relative has certain rights under the Act, including some rights to information.²¹ But confidentiality laws are the same, even if you are the nearest relative. This means that you can't usually get information if your loved one doesn't give consent.²²

Your loved one can decide what information they would like their nearest relative and others to know.²³ Patients are encouraged to agree to their information being shared.²⁴ This means that their carers, friends and relatives can be kept informed.

You can get more information about '**Nearest relative**' information rights at www.rethink.org. Or call our General Enquiries Team 0121 522 7007 and ask them to send you a copy of our factsheet.

6. What arrangements can my loved one make for the future?

To try and stop any problems with confidentiality in the future, you could speak to your loved one. You can talk about why it would be good to share information with you. There are examples in [section 4](#) of the factsheet.

You could explain they don't have to give consent for professionals to share everything. For example, they might be happy for information about their diagnosis to be shared, but not their treatment plan. Ask them what they would feel comfortable to share.

Can my loved one complete a consent form?

Your loved one should tell professionals what information they are happy for you to know.

It may be helpful if your loved one writes down their consent on a form. Your loved one will need to have mental capacity when they fill out the form. Mental capacity means someone understands the decision they are making. Someone can have mental capacity when they are unwell in hospital.

Your loved one should ask healthcare staff to put a note at the front of their care plan or medical records. This is so that professionals know about the consent form and know what information they can share.

You can find an example consent form in the [Sample letters](#) section at the end of this factsheet.

What if professionals still don't share information with me?

You might find it difficult to get information from professionals even when your loved one has given consent. If this happens, you can speak to the professional involved. You can ask their reasons for not sharing information.

If you think the professional does not have good reasons you can make a complaint.

You can ask for a copy of the local policy on information sharing and confidentiality. You will be able to see if they have followed their policy correctly. If they haven't followed their policy, you could use this as evidence to help you put a complaint together.

You might be able to get some help making a complaint from an NHS complaints advocate. Advocates don't work for the NHS and are free to use.

You can find your local service online by using terms like 'NHS complaints advocacy Leicestershire'. Search using your county, metropolitan borough, or London borough.

You can find more information about:

- Mental capacity and mental illness – The Mental Capacity Act 2005
- Complaining about the NHS and social services
- Advocacy for mental health

at www.rethink.org. Or call our General Enquiries Team on 0121 522 7007 and ask them to send you a copy of our factsheet.

What is an advance statement?

Your loved one could fill out an advance statement to explain what they would like to happen in the future if they become unwell.

Your loved one might lose the ability to make a decision for themselves when they are unwell. This is called lacking mental capacity.

An advance statement can explain what they would like professionals to share with you or other people.

An advance statement is a general preference about your loved one's treatment and care. It isn't legally binding, but medical professionals should still make a practical effort to follow their wishes.²⁵

What is an advance decision?

Your loved one could make an advance decision. It gives them the legal right to refuse specific medical treatment in future. This is when they may not have the mental capacity to make the decision for themselves at that time.

An advanced decision is legally binding. But Health professionals don't legally have to follow an advance decision if your loved one is in hospital under the Mental Health Act.

You can find more information about '**Planning your future care – Advance statements and advance decisions**' at www.rethink.org. Or call our General Enquiries Team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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Confidentiality and information sharing consent form

I _____ (full name)

of _____

_____ (address)

Give consent for (for example, GP, CPN, social worker):

_____ (include a specific
named professional or a class of professional e.g. 'my named GP from
time to time')

To share information with:

_____ (full name of carer
/friend /relative):

of _____

_____ (their address)

About the following areas of my care and treatment:

My diagnosis and symptoms ☐

My medication ☐

Other treatment ☐

My care plan ☐

Discharge plans ☐

Other (see the box below) ☐

All of the things above ☐

Other:

They are my (for example, my mother, brother):

Their phone number:

Their email address:

I reserve the right to revoke the consent I've given in this letter at any time, verbally or in writing.

Signed _____

Date _____

References

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- ³ General Medical Council. *Confidentiality: Good practice in handling patient information*. Manchester: General Medical Council; 2017. Para 13.
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- ⁵ Health and Care Professionals Council. *Confidentiality: Guidance for registrants*. London: Health and Care Professionals Council; 2018. Section 8.
- ⁶ General Medical Council. *Confidentiality: Good practice in handling patient information*. Manchester: General Medical Council; 2017. Para 30.
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- ⁸ General Medical Council (GMC). *Confidentiality: Good practice in handling patient information*. 2017. Para 115.
- ⁹ Department of Health. *Confidentiality: NHS Code of Practice*. London: Department of Health; 2003. Annex B, para 7.
- ¹⁰ Department of Health. *Confidentiality: NHS Code of Practice*. London: Department of Health; 2003. Annex B, para 8.
- ¹¹ General Medical Council (GMC). *Confidentiality: Good practice in handling patient information*. 2017. Para 15.
- ¹² Department of Health. *Confidentiality: NHS Code of Practice*. London: Department of Health; 2003. Annex B, para 30.
- ¹³ Department of Health. *Confidentiality: NHS Code of Practice*. London: Department of Health; 2003. Annex B, para 49-50.
- ¹⁴ General Medical Council (GMC). *Confidentiality: good practice in handling patient information*. Manchester: GMC; 2017. Para 16.
- ¹⁵ Department of Health. *Confidentiality: NHS Code of Practice*. London: Department of Health; 2003. Annex B, para 35.
- ¹⁶ Royal College of Psychiatrists. *Good Psychiatric Practice: Confidentiality and information sharing*. 2017. www.rcpsych.ac.uk/docs/default-source/improving-care/better-mh-policy/college-reports/college-report-cr209.pdf?sfvrsn=23858153_2. Para 64. (accessed 27 April 2023)
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- ¹⁸ General Medical Council (GMC). *Confidentiality: Good practice in handling patient information*. 2017. Para 39.
- ¹⁹ General Medical Council (GMC). *Confidentiality: good practice in handling patient information - Using and disclosing patient information for direct care*. Para 40 <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality/using-and-disclosing-patient-information-for-direct-care> (accessed 9 May 2023)
- ²⁰ General Medical Council (GMC). *Confidentiality: good practice in handling patient information - Using and disclosing patient information for direct care*. Para 40 <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality/using-and-disclosing-patient-information-for-direct-care> (accessed 9 May 2023)
- ²¹ Department of Health. *Mental Health Act 1983: Code of Practice*. London: The Stationery Office; 2015. Para 4.31-4.36.
- ²² Department of Health. *Mental Health Act 1983: Code of Practice*. London: The Stationery Office; 2015. Para 4.32.
- ²³ Department of Health. *Mental Health Act 1983: Code of Practice*. London: The Stationery Office; 2015. Para 4.32
- ²⁴ Department of Health. *Mental Health Act 1983: Code of Practice*. London: The Stationery Office; 2015. Para 4.43.
- ²⁵ National Institute for Clinical Excellence. *Information for the public: glossary* <https://www.nice.org.uk/guidance/cg136/1fp/chapter/glossary#advance-statement> (accessed 7th January 2021)

This factsheet is available in large print.

Rethink Mental Illness Advice Service

Phone 0808 801 0525
Monday to Friday, 9:30am to 4pm
(excluding bank holidays)

Email advice@rethink.org



Patient Information Forum

Did this help?

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Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness:
RAIS

PO Box 18252

Solihull

B91 9BA

or call us on 0808 801 0525

We're open 9:30am to 4pm

Monday to Friday (excluding bank holidays)



Equality, rights, fair treatment, and the maximum quality of life for all those severely affected by mental illness.

For further information on Rethink Mental Illness Phone 0121 522 7007
Email info@rethink.org



rethink.org

Need more help?

Go to rethink.org for information on symptoms, treatments, money and benefits and your rights.

Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, and we will send you the information you need in the post.

Need to talk to an adviser?

If you need practical advice, call us on: 0808 801 0525 between 9:30am to 4pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

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