

Information Governance: NHS Chaplaincy and Non-Religious Pastoral Support

Chaplains are employed by the NHS and other healthcare organisations for their expertise in providing *spiritual, pastoral and religious care*. Chaplains come from many different religions and beliefs but are united by their compassionate concern to support those who are challenged by illness and injury.

Healthcare Chaplaincy¹ is a service and profession that is focused on ensuring that people of all religions and beliefs can access pastoral, religious or spiritual support when they need it.

Chaplains are NHS employees, but teams may also include Honorary² Staff, Volunteers (with relevant screening and authorisation) and individuals working through a Service Level Agreement (SLA). Whilst the information governance (IG) obligations are largely the same for both employed staff and volunteers, some additional considerations apply to volunteers which are identified below.

Information governance describes how an organisation manages the information and data it holds, particularly about individuals. It covers matters such as policies and procedures, security, and staff training and development. Having effective information governance helps the NHS to comply with the law governing the personal data of individuals, which is contained in the General Data Protection Regulation and the Data Protection Act 2018.

The Chaplaincy service has a role in ensuring the NHS maintains good information governance, and the work done by employed chaplains and volunteers must comply with the legal duties.

There are no IG considerations that prevent Chaplains from being visible on their healthcare premises and striking up informal conversations with patients and families. Such visibility and engagement is typically an expectation of those carrying out this role.

¹ NHS England's NHS Chaplaincy Guidelines 2015: *Promoting Excellence in Pastoral, Spiritual & Religious Care* "... we have used the term 'Chaplaincy', as it is widely used in the NHS. It is intended to include the pastoral and spiritual care provided to patients, families and staff, whatever it is called in practice, and to include religious care provided by and to religious people. The term 'Chaplain' is intended to also refer to non-religious pastoral and spiritual care providers who provide care to patients, families and staff.

² These are a small number of individuals who are not paid, but nevertheless are expected to function at the level of a Band 5 Chaplain (or above). Examples might include a member of a religious order (who cannot receive payment for their work) or a religion/belief specific post holder whose time is 'gifted'. Whilst they are unpaid, to have an 'Honorary' status they must be subject to recruitment, oversight, appraisal and endorsement process which is directly equivalent to a paid Chaplain.

NHS England published "*NHS Chaplaincy Guidelines in 2015: Promoting Excellence in Pastoral, Spiritual & Religious Care*". This document committed to developing further guidance on IG issues. This paper is a result of that process and is intended to supplement the 2015 Guidelines.

This guidance sets out the Data Protection principles that **must** be considered by local providers who host a Chaplaincy service.

The following principles underlie this document:

1. Chaplains need to be provided with relevant information to carry out their duties, and for the health service to meet the needs of patients
2. The processing of any information about an individual must be **lawful, fair and transparent**³
3. Each organisation **must** have a locally agreed Chaplaincy IG policy (or Chaplaincy section within its principle IG policy), which complements the main principles drawn from this paper

Specific Guidance

Data concerning a person's health, and data concerning religious or philosophical beliefs, are a class of "special category data". The processing of special category data is prohibited, unless a ground for processing that data can be identified. The processing – including sharing – of data about patients for the purposes of providing chaplaincy services may well involve data concerning a patient's health or religion.

There may be cases where data shared with Chaplains does not concern a person's health or religious or philosophical beliefs. In those cases, the data may fulfil another definition of special category data, or not be special category data at all. Organisations will need to ensure their locally agreed Chaplaincy IG policy provides guidance on identifying different categories of data, and the different requirements for processing each.

The following are examples of grounds for processing special category data :

1. Explicit Consent⁴

This must be:

- I. **Freely given** – giving people genuine ongoing choice and control over how their data is used.

³ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/lawfulness-fairness-and-transparency/>

⁴ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/>

- II. **Informed** – should be obvious and require a positive action to opt in. Consent requests must be prominent, unbundled from other terms and conditions, concise and easy to understand, and user-friendly.
- III. **Specific** – covers the purposes of processing, the processing activity and organisations involved.

There is no set time limit for consent. How long it lasts will depend on the context. You should review and refresh consent as appropriate. However, it is important to note that consent can be withdrawn at any time.

Examples of this might be:

- a) The patient is asked by a member of staff if they would like to see a Chaplain. As the patient has not sought this service out themselves, it is important that their consent is freely given. At this stage the member of staff needs to be clear and concise about the information that would be provided to the Chaplaincy team to facilitate a visit (a small leaflet on the Chaplaincy team may help – see transparency section below). In saying “yes”, the patient is clearly consenting to the minimum information (e.g. name, location within hospital, etc) needed to facilitate the Chaplain to visit. The giving of consent needs to be recorded.

Example 1:

- Would you like a member of the Chaplaincy to visit you?
- Do you have any particular requests?

The patient instigates the contact by asking about the Chaplaincy Service and they express they would like to access it. Although in this case the patient has asked to access the Chaplaincy Service, and their consent can be said to be freely given from the outset, their consent must still be informed. As in the above example, staff should be clear and concise about the information that would be provided to the Chaplaincy team to facilitate a visit, and the giving of consent needs to be recorded.

- b) The patient has previously consented to a Chaplain visit, and asked him/her to visit again, if they are readmitted to the hospital. This must be clearly documented on the patient record. The patient can withdraw this at any time and there must be a mechanism to record this.

A patient asks the Chaplain to inform another Hospital's Chaplain or a Local Community Leader that they are being transferred to another setting, and they would like to receive support there. This will involve the sharing of data about the patient between one chaplaincy service and another, or with an external body. If consent is relied upon, then the consent must again be freely given, informed and explicit. For consent to be informed, the patient

should be provided with information about who their data will be shared with and how it will be shared. Again, the giving of consent needs to be recorded

2. Where consent cannot be provided

There may be situations where consent cannot be relied upon. This could occur in end-of-life settings or where the patient is incapacitated or through their poor mental health in circumstances where they cannot give their own explicit, informed consent.

Where a third party has been empowered to act in the patient's best interests, such as through power of attorney, that person could be approached in order to seek consent.

Alternatively, there may be a substantial public interest reason (see Article 9(2)(g))⁵ for processing data, relating to the provision of confidential counselling, advice and support services. This would apply if data shared with the chaplaincy service related to one of those activities and consent cannot be obtained (or it would not be reasonable to obtain it) in the circumstances.

3. Medical Purposes (Article 9(2)h GDPR)

Chaplains and Chaplaincy volunteers are an essential part of the Multi-Disciplinary Team (MDT) and, in many places Chaplains personally lead assessment of the spiritual and pastoral needs of patients (particularly in Mental Health and for patients receiving palliative care) and their families, which in turn informs the care delivered by the team.

MDTs may include various health professionals⁶, other professionals (including Chaplains) and representatives of patient support and advice organisations.

The Medical Purposes exception⁷ might be used as a legal basis of processing, to allow the discussion of the care of a patient at an MDT that includes the presence of a Chaplain. It will need to be shown that the processing is for the purpose of one of the following:

- (a) preventive or occupational medicine,
- (b) the assessment of the working capacity of an employee,
- (c) medical diagnosis,
- (d) the provision of health care or treatment,
- (e) the provision of social care, or
- (f) the management of health care systems or services or social care systems or services.

⁵ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/>

⁶ <http://www.legislation.gov.uk/ukpga/2018/12/section/204/enacted>

⁷ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/>

The “public task” condition for processing data (Article 6(1)(e) GDPR)

Where data does not concern a person’s health or religious or philosophical beliefs, and is not another type of special category data, processing will be lawful if one of the criteria in Article 6 GDPR are satisfied. Article 6(1)(e) is satisfied if the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority.⁸

Safeguarding

Where there is a potential safeguarding issue for the Chaplain or Chaplaincy Volunteer (e.g. the patient is violent or may become distressed by a chaplaincy visit), there is a best-practice and lawful requirement to pass in sufficient relevant information to ensure that the interaction between the Chaplain / Chaplaincy Volunteer and the patient or carer is safe. No member of the Chaplaincy team, or any patients, should be placed in a situation where risk of harm is increased due to an interpretation of IG guidance.

Only information that is necessary to ensure the safety of the interaction should be passed on.

Confidentiality

Considerations must also be given to meeting the requirements of the Common Law Duty of Confidentiality and whether a patient would reasonably expect their information to be disclosed for this purpose.

The common law duty of confidence requires that where a person has disclosed confidential information with the expectation that it would be kept confidential, then it should not normally be disclosed without their consent.

The patient must be informed of the composition of the MDT, and if they object to any member of the MDT being present, this must be complied with when this patient is being discussed.

⁸ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/>

Local Policy Oversight

Consent for access to records is a matter for local care provider procedures. This must be overseen by the local IG team and the Caldicott Guardian. A Data Protection Impact Assessment⁹ (DPIA) should be incorporated into the process of setting local policies. This could be used to justify the levels of access Chaplaincy members may have to the patient record, including adding notes of visits.

Transparency¹⁰

GDPR requires that patients are kept up-to date with how their data is used, shared and for what purposes.

It is recommended that patients are provided with up-to date information (in accessible language) about how the Chaplaincy services uses their data including rights¹¹ the patient has.

Patient Records

Chaplains must only access records to document their visits and review previous chaplaincy notes. Access to the other sections of the patient record must be restricted. This must be managed locally as described in the local policy oversight section above.

Considerations for Chaplaincy Volunteers

Chaplaincy Volunteers within the NHS must not have direct access to patient records. If an entry needs to be made in the patient record this must be done by a member of staff with relevant access.

Organisations will need to ensure that data protection considerations are set out in an appropriate agreement with chaplaincy volunteers, governing access to and processing of personal data.

Training

Chaplaincy team members (including Chaplains, Chaplaincy Volunteers and Honorary Staff) **must** receive regular training (supported by regular updates) in IG, Confidentiality, Equality and Safeguarding to a similar standard of all employees of the relevant organisation. A record must be kept of all training undertaken.

⁹ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-impact-assessments/>

¹⁰ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/lawfulness-fairness-and-transparency/>

¹¹ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>

Registered Chaplains

Most Chaplains are recognised as being in good standing with a religious or belief organisation.

Many Chaplains are also UK Board for Healthcare Chaplaincy (UKBHC)¹² registered. The UKBHC maintains a voluntary professional register, overseen by the Professional Standards Authority. This ensures the accountability of Healthcare Chaplains to the public, to promote high standards of practice and behaviour, and to support professional regulation. Chaplains registered with the Board are entitled to refer to themselves as a "Board Registered."

The UKBHC has a code of conduct that all registered Chaplains are required to follow. It is best practice to require all Chaplains to follow this code, irrespective of whether they are registered. (http://www.ukbhc.org.uk/chaplains/professional_conduct)

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¹² <http://www.ukbhc.org.uk/chaplains/registration>