



**Welcome – lunch til 1:30**

**If you are directly-employed  
by the PCT, please sit at  
the back**

**January & February 2010**

**London  
Programme for IT**

# Confidentiality and Consent for sharing electronic records

**David Stone, IG Consultant, Apira**

**Stephen Elgar; IG Manager, NHS London**

# Content

- Aims and objectives
- Introductions & warm up
- GMC guidance
- Existing systems & electronic patient information
- New developments; Summary of GMC Guidance with particular reference to electronic-held patient information
- Class Commissioning, EMIS, Polysystems and clinics
- Conclusion

I am not an expert on law, this is an introductory to the GMC Guidance with particular reference to electronic-held patient information

If you are unsure about a particular issue please contact your Caldicott Guardian

# Aims & Objectives

## **Aim:**

- to introduce delegates to the GMC Confidentiality 2009 Guidelines and stimulate thinking on electronic sharing of patient information

## **Objectives:**

- Walk through GMC Confidentiality 2009 Guidelines with a focus on the potential and challenge of electronic sharing
- Consider how existing GP systems communicates
- Consider new developments for the next 3 years: Summary Care Record, extending use of GP systems, World Class Commissioning
- Enable reuse of this material within the GP Practice with the team

# Introductions

- Please turn to the person next to you...

# Warm Up Quiz

- Is confidentiality included in the Hippocratic oath?

*“All that may come to my knowledge in the exercise of my profession or in daily commerce with men, which ought not to be spread abroad, I will keep secret and will never reveal.”*

- Have there been any recent Human Rights rulings on patient confidentiality?

*Yes, Finish Nurse with HIV, her work colleagues found out (presumably) through viewing paper records, the hospital could not prove this access had not taken place*

- NHS staff do not have to be system security specialist but they do have an obligation in this context – what is this obligation?

*Yes, to know your workplace policy & procedure and follow it*

- As a member of staff working for the NHS what is your greatest concern in terms of confidentiality?

# GMC Confidentiality guidance



# Motivation – pg 4

- Being registered with the General Medical Council gives you rights and privileges. In return, you have a duty to meet the standards of competence, care and conduct set by the GMC.
- *Good Medical Practice* makes clear that patients have a right to expect that information about them will be held in confidence by their doctors. This guidance sets out the principles of confidentiality and respect for patients' privacy that you are expected to understand and follow.

# GMC Confidentiality guidance



# Confidentiality

- This is an ethical and legal requirement for the healthcare team
- Controls assurance = Information Governance Toolkit:
  - Range of activities from staff training, physical and system security
  - Annual public statement and Practice plan for improvement
  - Care Record Guarantee

*Legal  
basis?*

*Common Law  
Data Protection Act 1998  
Human Rights  
NHS Act 2006*

# Implicit or implied patient consent

- The care team = multi-disciplinary

*What does this mean / how does this begin & where does it end?*

*Is the exercise of the Duty of care and confidentiality the same across all in the “flexible” team*

*Importance of discussion and formal patient leaflets / information*

*What should you do if the patient says no?*

*Patient safety argument in emergency*

# Confidentiality is not absolute

Confidentiality is an important duty, but it is not absolute. You can disclose personal information if:

- (a) it is required by law (see paragraphs 17 to 23)
- (b) the patient consents – either implicitly for the sake of their own care (see paragraphs 25 to 31) or expressly for their purposes (see paragraphs 32 to 35)
- (c) it is justified in the public interest (see paragraphs 36 to 56)

# Disclosure required by law

- Infectious disease (if covered) , e.g. HIV, TB?
- Statutory powers e.g. accidents
  - should tell patients unless this would undermine purpose*
- GMC professional practice (request not required by law)

*Should ask and if not possible contact regulatory body*

- Disclosure to courts (can object to irrelevant information)
- Solicitor, Police officer
  - Should ask for consent unless required by law or justified by public interest*

# Clinical audit

- Local

*Use personal identifiable if patient made aware (leaflet etc...) and hasn't objected*

- If patient objects?

*Explanation, if not possible to provide safe care without then explain to the patient*

If audit not being undertaken by care team or those who support them – anonymised or gain express consent

*Issues / examples?*

# Express or informed patient consent

- Financial audit, insurance & benefits claim

*Any issues?*

- Patients insurer, employer or government department or agency, you should (looking at record or following examination: -
  - Be satisfied patient understands
  - Obtain or see written consent (can accept assurance from someone properly authorised)
  - Only disclose what can be substantiated and presented in an unbiased way, relevant etc...
  - Offer to show patient before anything sent unless
    - They have already said that they don't want to see it
    - Could Cause harm to patient or 3<sup>rd</sup> party (e.g. child)

*Any issues?*

# Public Interest

- There is clear public good in a confidential medical service & there can be public interest in disclosure without consent if benefit to individual or the public outweighs this
- Should always seek to anonymise but also seek consent unless:
  - Patient is not competent (then seek guardian etc..)
  - Consent could put you or others at risk of serious harm
  - Would prejudice purpose – e.g. prevent serious crime
  - Quick action required – e.g. communicable disease

*Any issues?*

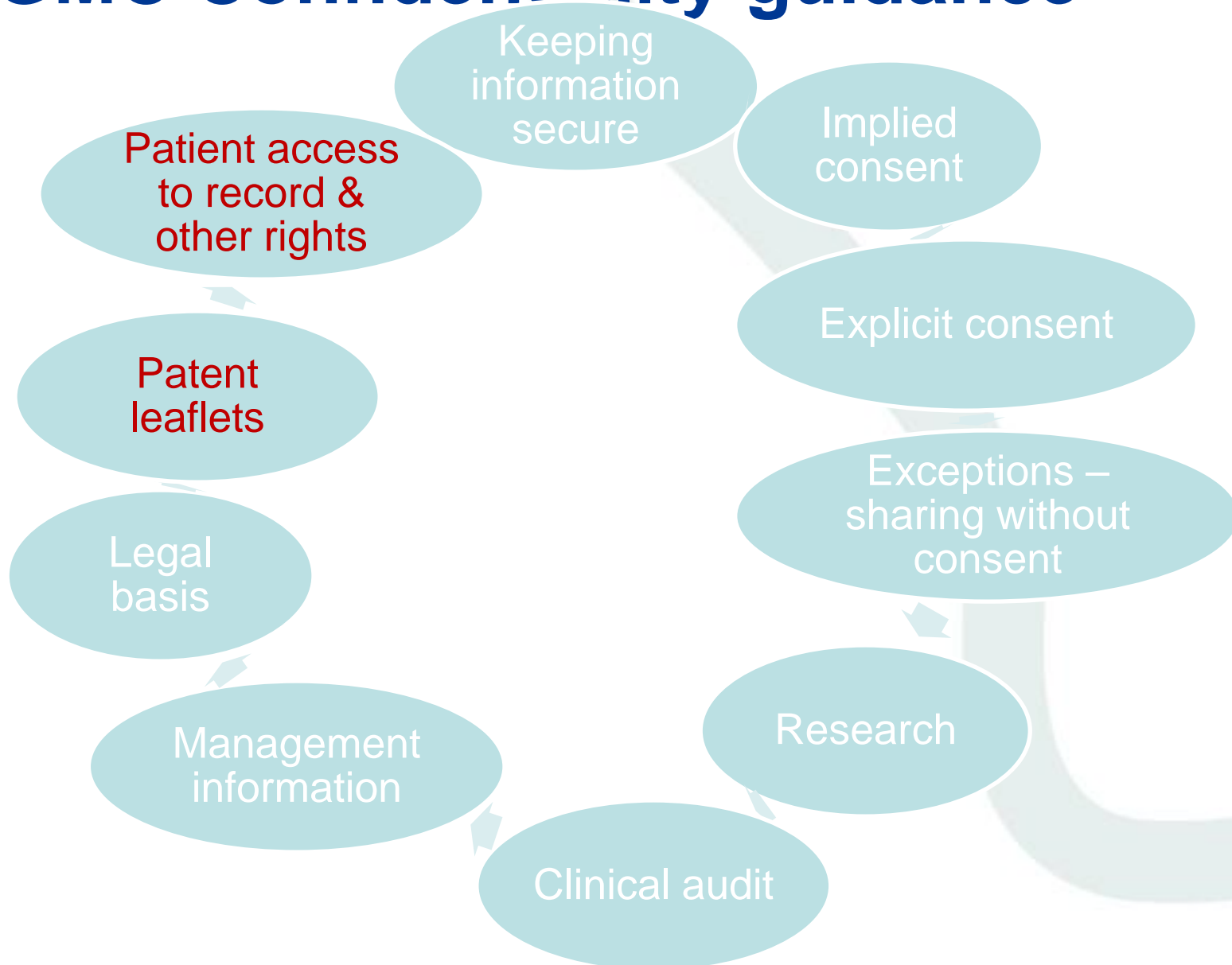
# Research

- Research, epidemiology, public health surveillance, health service planning, and education and training are important secondary uses
  - Often sufficient to use coded or anonymised
  - If not seek consent if practical
- Can disclose if Section 251 NHS Act 2006 (re National Information Governance Board) or in public interest – need to be able to prove consent is not practical re:
  - Age of records, tractability of patients, number of records, possibility of introducing bias if particular patients refuse
  - NB use of “Safehavens” and can delegate to third parties

*Ask advice – Caldicott Guardians*

*Any issues, examples?*

# GMC Confidentiality guidance



# Patient information

- Leaflet and staff discussions

*Issues?*

- Subject Access Requests & Freedom of Information

*Issues?*

David Stone,  
Information Governance Consultant, Apira  
[david.stone@apira.co.uk](mailto:david.stone@apira.co.uk)

[www.apira.co.uk](http://www.apira.co.uk)

T +44 (0)207 960 9626

M +44 (0)7947 052704

Stephen Elgar  
NHS London - Information Governance Manager

[s.elgar@nhs.net](mailto:s.elgar@nhs.net)

0207 969 5748



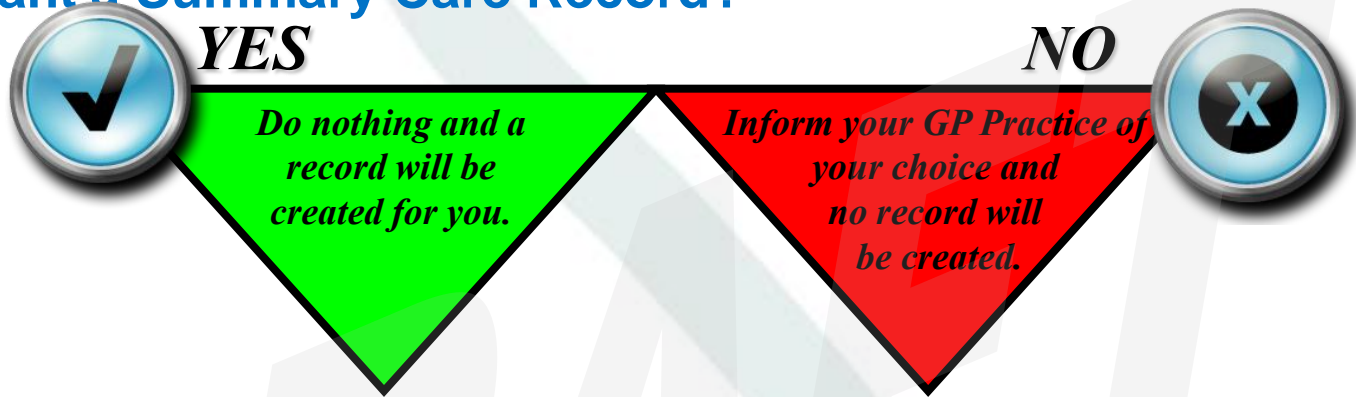
*Buzz session*

# electronic communications *1 of 6*

- Please take a piece of paper and note all the electronic connections between your GP system and the outside world (connections that carry patient information)
- Consider whether consent should be asked of patients for any of these messages
- Some GPs are enabled to view the local hospital results system for Pathology – are there any issues with this?

**Creating the Record:**

**Do you want a Summary Care Record?**



**Using the Record:**

**Can I look at your Summary Care Record?**



\*In an emergency where you are unable to be asked, or certain medical/legal circumstances (such as Court Order) the clinicians involved in your care may access the record without asking. All such actions will be recorded for investigation.

# Summary Care Record consent *2 of 6*

- A letter explaining the launch of the Summary Care Record in London is being sent to all households with the option of asking your GP to set the consent status
- PI consider how patients will react. Are there additional questions that may arise?
- Prepare a plan for your Practice to respond

# World Class Commissioning *3 of 6*

- <http://www.dh.gov.uk/en/managingyourorganisation/commissioning/worldclasscommissioning/index.htm>
- World class commissioning will deliver a more strategic and long-term approach to commissioning services, with a clear focus on delivering improved health outcomes. There are four key elements to the programme;
  - a vision for world class commissioning,
  - a set of world class commissioning competencies,
  - an assurance system and a support and
  - development framework.

What confidentiality challenges are presented?  
E.g. in identifying patients with long term conditions / risk of long term conditions / risk of admissions

# Child Protection 3 of 6

- To improve child protection there is a proposal to search the 3 local A&E registers for attendance
  - For children who repeatedly attend
  - “mystery shop”
  - Unusual injuries
- What confidentiality challenges are presented?

# Adastra and INPS / EMISweb *4 of 6*

[http://www.e-health-insider.com/news/4968/emis\\_web\\_links\\_to\\_secondary\\_care](http://www.e-health-insider.com/news/4968/emis_web_links_to_secondary_care)

- Leading GP IT system supplier EMIS has unveiled its next generation IT system EMIS Web, promising interoperability with primary and secondary care providers.
- EMIS claims the system will set a new standard for the NHS, by enabling clinicians outside general practice to access a patient's GP medical record, view other patient information recorded on the system, and add to that data.
- INPS and iSoft and out-of-hours provider Adastra are also to share data

What confidentiality challenges are presented? This will result in more people using the GP system

# Polysystems & clinics *5 of 6*

- [http://www.e-health-insider.com/news/4968/emis\\_web\\_links\\_to\\_secondary\\_care](http://www.e-health-insider.com/news/4968/emis_web_links_to_secondary_care)
- Leading GP IT system supplier EMIS has unveiled its next generation IT system EMIS Web, promising interoperability with primary and secondary care providers.
- EMIS claims the system will set a new standard for the NHS, by enabling clinicians outside general practice to access a patient's GP medical record, view other patient information recorded on the system, and add to that data.
- INPS and iSoft and out-of-hours provider Adastra are also to share data

What confidentiality challenges are presented? Shared use of building and reception, possibly shared use of systems.

# Take away

6 of 6

- Are there actions that you think Practice teams should take?
- If so – what should be included?
- Are there things that other parts of the NHS should do?