

Knowledge of, and ability to work with, issues of confidentiality and consent

Decisions about issues of confidentiality and consent may be influenced by judgments regarding the individual's capacity. Capacity is referred to in this document, but considered in more detail in the relevant section of this framework

Knowledge of policies and legislation

An ability to draw on knowledge of local policies on confidentiality and information sharing both within and between teams or agencies.

An ability to draw on knowledge of the principles of the relevant legislation relating to legal capacity

Knowledge of legal definitions of consent to an intervention

An ability to draw on knowledge that valid legal consent to an intervention is composed of three elements:

the person being invited to give consent must be capable of consenting (legally competent)

the consent must be freely given

the person consenting must be suitably informed

An ability to draw on knowledge that individuals have a right to withdraw or limit consent at any time.

Knowledge of capacity*

An ability to draw on knowledge relevant to the capacity of individuals to give consent to an intervention:

*competences relevant to the assessment of capacity are detailed elsewhere in the relevant section of this framework

Ability to gain informed consent to an intervention from clients and their significant others

An ability to give clients the information they need to decide whether to proceed with an intervention e.g.:

what the intervention involves

the potential benefits and risks of the proposed intervention

what alternatives are available to them

An ability to use an interpreter where the client's first language is not that used by the practitioner and their language skills indicate that this is necessary

Where clients have a disability, an ability to ensure that information is provided in an accessible form (e.g. using an interpreter for people with hearing-impairments)

An ability to invite and to actively respond to questions regarding the proposed intervention

An ability to address any concerns or fears regarding the proposed intervention

An ability to draw on knowledge that even where consent has been granted it is usual to revisit this issue when introducing specific aspects of an assessment or intervention

Ability to draw on knowledge of confidentiality and information sharing

An ability to draw on knowledge that a duty of confidentiality is owed:
to the client to whom the information relates
to any individuals who have provided relevant information on the understanding it is to be kept confidential
An ability to draw on knowledge that confidence is breached where the sharing of confidential information is not authorised by those individuals who provided it or to whom it relates
An ability to draw on knowledge that there is no breach of confidence if:
information was provided on the understanding that it would be shared with a limited range of people or for limited purposes, and information has been shared in accordance with that understanding
there is explicit consent to the sharing
An ability to maintain the client's right to confidentiality even when a significant other or other professional requests information
An ability to draw on knowledge that it is appropriate to breach confidentiality when withholding information could:
place a person (e.g. family members, significant others, the therapist, or a third party) at risk of significant harm
prejudice the prevention, detection or prosecution of a serious crime
lead to an unjustified delay in making enquiries about allegations of significant harm to others

Ability to inform all relevant parties about issues of confidentiality and information sharing

An ability to explain to all relevant parties (e.g. clients, significant others and other professionals) the limits of confidentiality and circumstances in which it may be breached e.g. when a client is considered to be at risk
An ability to inform all relevant parties about local service policy on how information will be shared, and to seek their consent to these procedures (e.g. the ways information about the assessment and intervention will be shared with referrers).
An ability to revisit consent to share information if:
there is significant change in the way the information is to be used.
there is a change in the relationship between the agency and the individual
there is a need for a referral to another agency who may provide further assessment or intervention.
An ability to draw on knowledge that safeguarding needs usually take precedence over issues of consent and confidentiality

Ability to assess the client's capacity to consent to information sharing*

An ability to gauge the client's capacity to give consent by assessing whether they:
have a reasonable understanding of what information might be shared, the main reason(s) for sharing it and the implications of sharing or not sharing the information
appreciate and can consider the alternative courses of action open to them
express a clear personal view on the matter (as distinct from repeating what someone else thinks they should do)
are reasonably consistent in their view on the matter (i.e. are not changing their mind frequently)

*competences relevant to the assessment of capacity are detailed elsewhere in the relevant section of this framework

Ability to share information appropriately and securely

An ability to ensure that when decisions are made to share information the practitioner draws on knowledge of information sharing and guidance at national and local level, and:

shares it only with the person or people who need to know

ensures that it is necessary for the purposes for which it is being shared

check that it is accurate and up-to-date

distinguishes fact from opinion

understand the limits of any consent given (especially if the information has been provided by a third party)

establishes whether the recipient intends to pass it on to other people, and ensure the recipient understands the limits of any consent that has been given;

ensures that the person to whom the information relates (or the person who provided the information) is informed that information is being shared, where it is safe to do so

An ability to ensure that information is shared in a secure way and in line with NHS and/or local authority policies

Sources

Department of Health (2003) *Confidentiality: NHS Code of Practice*,
www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4069253

Department of Health (2007) *Mental Capacity Act (2005) Summary Document*
<http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/legal-policy/mental-capacity/mca-summary.pdf>

Mental Capacity Act in England and Wales (2005) at:
<http://www.opsi.gov.uk/legislation/uk>

Scottish Executive Health Department (2006) *A Good Practice Guide on Consent for Health Professionals in NHS Scotland*.