09 June 2026

Shared Insights

Confidentiality: Legal principles governing third party disclosure requests in the health and care sector

Speakers

Andrew Hopkin – Partner in the criminal, compliance and regulatory team at Browne Jacobson
Mark Bolt – Mental Health Liaison Officer at Cornwall Partnership NHS Foundation Trust and previously Superintendent in the Cornwall police force
George Fernie – Chair of the Caldicott Guardian Council
Helen Dyer – Vice Chair of the UK Caldicott Guardian Council

The UK Caldicott Guardian Council

NHS Cornwall Partnership NHS Foundation Trust

Browne Jacobson

Introduction

On 9 June 2026, Browne Jacobson hosted a Shared Insights session exploring the legal principles governing third party disclosure requests in the health and care sector.

The session examined the tension between confidentiality (a fundamental legal and ethical duty) and the circumstances in which disclosure of confidential information may nevertheless be lawful and appropriate.

Contents

How we can help

Our health advisory and inquest team headed by Rebecca Fitzpatrick has a wealth of experience advising a variety of public bodies in the health and social care sector in relation to requests for disclosure by the police and other bodies/individuals. They can also support with preparing or reviewing policies with regards to managing requests for data and patient information.

Our criminal compliance and regulatory team headed by one of our speakers, Andrew Hopkin can offer advice on regulatory compliance and policy and can also assist bodies when faced with regulatory or criminal investigations that affect their organisation.

Our information law team are expert in data protection law. They can help bodies to navigate complex information requests and can support clients to understand and work within the appropriate frameworks when dealing with requests for information/data.

Legal framework

Andrew Hopkin – Partner in the criminal, compliance and regulatory team at Browne Jacobson

The starting point is that confidentiality is a very important legal and ethical duty within all sectors, but it is not an absolute duty and there can be a proper basis upon which confidential information can be shared.

Andrew set out the legal framework that governs disclosure of confidential information in the UK.

Common law

This is law that is not made by Parliament, but by Judges through case law. It includes the principle that confidential information should not be disclosed, except in certain circumstances including; where patient consent is obtained, where disclosure is required by law or Court order, or the disclosure is justified in the public interest.

Legislation

There are laws set by Parliament that govern disclosure of confidential information. The most important are set out below.

General Data Protection Regulations and the Data Protection Act 2018

These define what "personal data" is which is any information relating to an identifiable person. This captures a wide range of information. The legislation sets out the responsibilities of "data controllers" which will include Local Authorities and NHS Trusts.

There are 6 data protection **principles** which should be considered when making decisions about disclosure. These include that personal data must be:

(1) Processed in a lawful, fair and transparent manner.

(2) Collated for specified and legitimate purposes.

(3) Adequate, relevant and limited to what is necessary. Prevention of a crime or safeguarding would be legitimate purposes.

Disclosure of limited and relevant medical records, rather than a patient's entire medical history, may be proportionate.

The legal framework also sets out special **conditions** for processing "Special Category Data", which would include health data. One or more of these conditions must be met and include: consent been given for the disclosure; the disclosure being necessary to protect the vital interests of the data subject or another when they have no capacity; and the disclosure being necessary for reasons of substantial public interest.

Human Rights Act 1998 ("HRA")

Article 8 of the HRA provides the right to privacy but isn't an absolute right and interference can be justified

Specific legislation

The above provide general principles, but there are other specific statutes which govern the disclosure of information in specific circumstances. Certain Acts require disclosure of information, for example for the identification of a driver in a road traffic accident or the prevention of terrorism. There are also regulatory bodies including the CQC and HSE who have the power to require disclosure and enforce penalties for failure. The Courts can make Orders for disclosure. Other legislation prevents disclosure for example under the Gender Recognition Act 2004 and the Human Fertilisation and Embryology Act 1990.

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Decisions about disclosure in practice

Mark Bolt – Mental Health Liaison Officer at Cornwall Partnership NHS Foundation Trust and previously Superintendent in the Cornwall police force

Mark explained his current role with the Trust, being the interface between the criminal justice system and the Trust. Day to day this involves having discussions with individuals who have received a request for disclosure and are considering whether the disclosure should be made. The starting point is if you have the power to make a disclosure then you have a duty to consider whether you should.

Mark illustrated that most of the time these decisions are not obvious and fall between two extremes. He gave an example of someone telling you that they had a viable device that would kill and maim lots of people and they were going to set it off tomorrow - it would be clear that you would disclose this to the police on the basis that you are preventing a crime. In the other extreme, if someone said that they stole a Mars Bar from Tesco 20 years ago, you would not likely contact the police about this.

When considering whether to make a disclosure, Mark recommends using the National Decision-Making Model and keeping a detailed record of what you have considered and how you have reached the decision. The model sets out stages of the decision-making process to include information gathering, assessment of risk, consideration of policies and powers, identification of options and contingencies, the taking of action and then review. Underpinning all of these stages are ethical principles and guidance for behaviour. A link to the decision-making model is available in the resources section below.

When making your decision, it is important to bear in mind that the police have two responsibilities when investigating a suspected crime; to determine whether the crime happened and if it did then who did it. In the first instance, Mark's practice is to provide sufficient information for the police to answer these questions and want to consider the crime. It is later that the question of culpability for the crime is addressed. You should also be mindful that whether or not something is a serious crime is very dependent on the relevant time period. There are things that would be considered a serious crime now that would not have been 5 years ago.

Mark acknowledged that the balance between maintaining patient confidentiality and the wider public interest is always a challenge. The Trust he works for part fund a police officer and when members of staff are considering a request for disclosure, they are encouraged to liaise with both Mark and this police officer to talk about why the disclosure is important, what the likely outcome is going to be when making the disclosure and whether the outcome will be changed if the disclosure is not made. Often it is worth explaining to the police that you have information that may potentially assist that you are able to provide if a formal request for information is made. Be mindful that the request made should be specific, not a vague or general request about a patent's comings and goings for example.

A further issue that can arise is when patients make disclosures to mental health practitioners and then whether and how to communicate this to the police. In Mark's Trust there is a system whereby staff can submit anonymous intelligence and seek advice from the police officer whether or not this should be disclosed. This assists in the task of balancing confidentiality and public interest.

Caldicott Guardian Council

George Fernie – Chair of the Caldicott Guardian Council

George Fernie explained that the Caldicott Guardian Council ("CGC") is the national body for Caldicott Guardians. It was named after Dame Fiona Caldicott, who chaired the Caldicott Committee on patient identifiable data in the NHS which led to the creation of Caldicott Guardians in all provider organisations in the NHS.

The CGC is a national advisory body and is a support function, it does not have regulatory powers. A Caldicott Guardian ("CG") is a senior figure within a health or social care organisation who makes sure that the personal information about its service users is used legally, ethically and appropriately, and that confidentiality is maintained.

There are Eight Caldicott principles that apply to the use of confidential information within health and social care organisations. They are:

1. Justify the purpose(s) for using confidential information.
2. Use confidential information only when it is necessary.
3. Use the minimum necessary confidential information.
4. Access to confidential information should be on a strict need to know basis.
5. Everyone with access to confidential information should be aware of their responsibilities.
6. Comply with the law.
7. The duty to share information for individual care is as important as the duty to protect patient confidentiality.
8. Inform patients and service users about how their confidential information is used.

George observed that there is no typical week as a CG. One of the recent requests received by him was to provide evidence for the Nottingham Inquiry.

His recommendation was that there should be greater use of CGs by Trusts when a public interest disclosure is being considered and CGs should address their educational needs. He recommended that more work be done to encourage understanding of confidentiality and lawful information sharing.

Helen provided some useful guidance about the decision-making process. She referred to the Caldicott framework which can be used to support making decisions about disclosure (see resources section below). Helen explained that there is often no right answer and it involves looking for the best possible or least worst answer. She describes the Caldicott framework as a sandwich, with the filling being the Caldicott principles and the bread being trustworthiness and the ethical framework. There are a number of ethical decision-making tools available, and she suggests Caldicott Guardians find one that suits the important decisions they must make.

Helen described her decision-making process which includes:

1. Consider your position and where you are coming from as the decision maker and what might be a barrier to you making a good decision.
2. Get your facts first, ask lots of questions and use an analytical approach.
3. Invite challenge and input from others who might have a different perspective.
4. Sleep on it. It is rare such a decision is urgent. Usually, you have time to think and reflect.
5. Write down your decision, rationale and any advice about implementation risks and mitigations: the process of writing it down may make you think about something else.

Helen also shared her "Caldicott Rationale Fish" (see resources) and works from the tail to the head, considering things including the Caldicott principles, the relevant legal framework, any professional guidance, ethics, accounts and advice from people she has spoken to and any further thoughts.

Conclusion

Whilst confidentiality is not an absolute duty, any decision to disclose must be carefully considered against the applicable legal framework and the specific facts of each request.

Our speakers emphasised the value of structured decision-making tools such as the national decision-making model and the Caldicott framework, to guide practitioners through what are rarely straightforward judgments.

Above all, thorough documentation of the decision-making process is essential, enabling organisations to evidence their rationale should a disclosure decision ever be called into question.

Takeaways for your practice

- Familiarise yourself with the legal framework relevant to the request you are dealing with.
- There is a distinction between law that requires the disclosure of confidential information and law that permits it. It is important to be aware which applies in your particular situation.
- If you can, get the disclosure request in writing so that as much legitimate detail as possible is set out.
- Consider what you are being asked to disclose. Is it a full document, an extract or are you being asked for an opinion?
- Consider the responsibilities of the police when investigating a crime and whether what you are being asked to disclose is relevant to that.
- Remember that it is not your job to do the police investigation. You do not need to look behind the reasons for the request in detail.
- Requests for information should be specific, not vague or seek general information about a patient.
- It is helpful to have a good working relationship with the police and be transparent.
- Whilst GDPR and data protection laws do not apply to someone who has died, a doctor's ethical duty of confidentiality remains a fundamental principle in medicine and the Caldicott principles do apply to a deceased service user.
- Make detailed notes of your decision-making processes and the judgments made so that you can evidence your rationale if ever asked why a disclosure was or was not made.
- Use one of the decision-making tools that are available to help (see resources section).
- Remember the Caldicott Principles and contact the CGC for assistance if needed.
- Anonymise documents that are disclosed where you can.

Resources

- National decision model | College of Policing
- Caldicott framework
- The ethical decision-making model (accessible) - GOV.UK
- Caldicott Rationale Fish
- Events — UKCGC

Contact us

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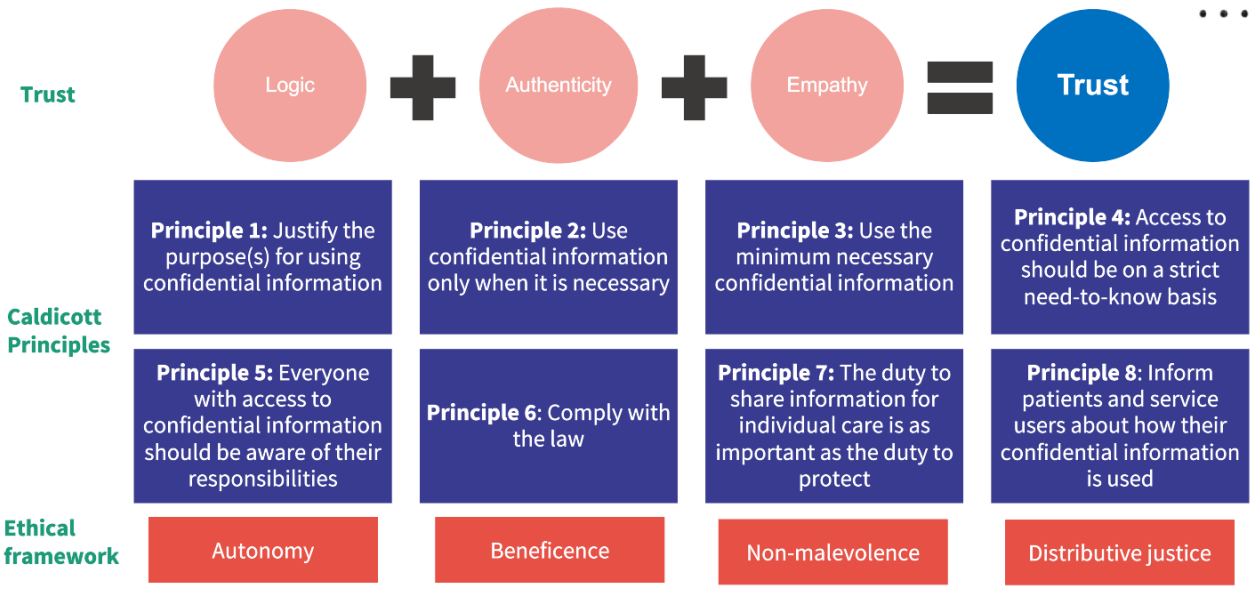
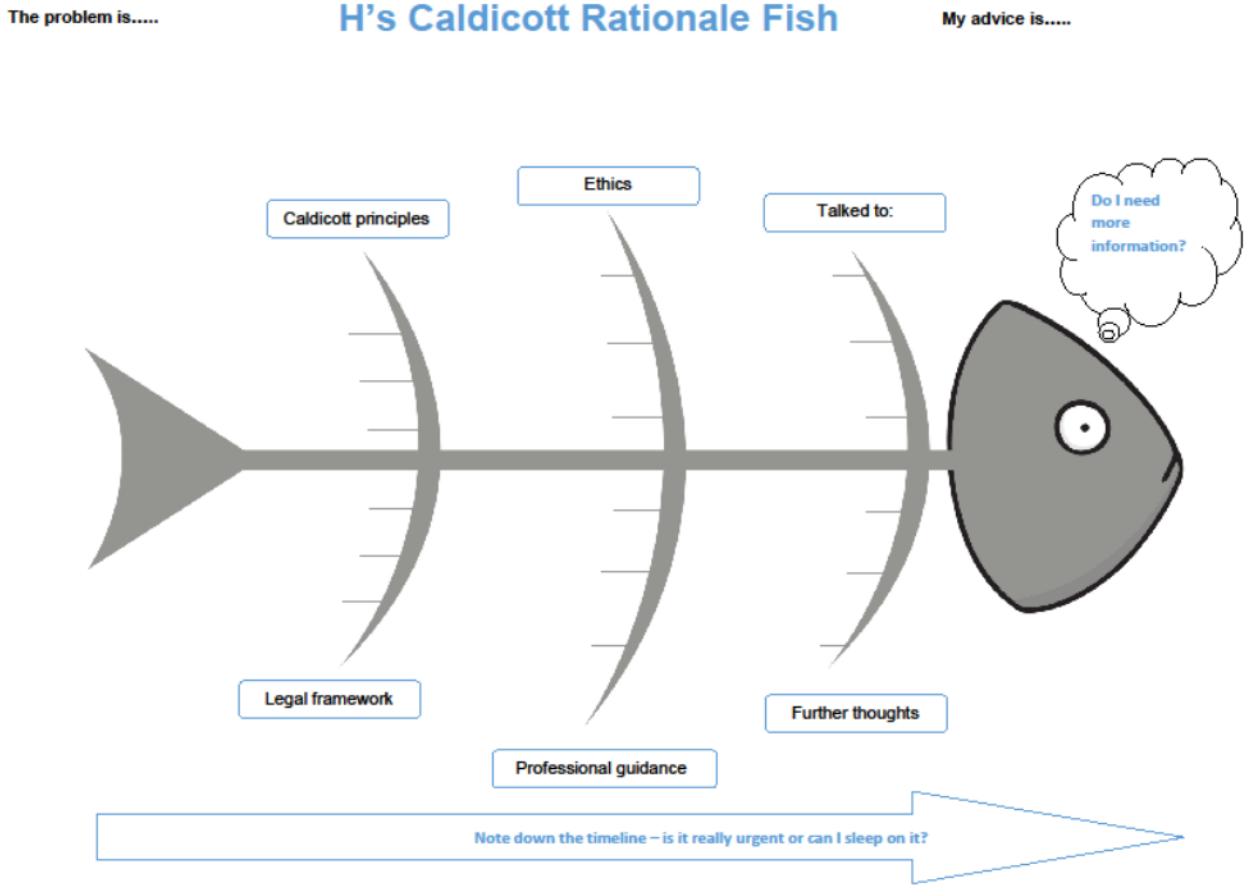
Caldicott framework



H's Caldicott Rationale Fish



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