Confidentiality is central to the relationship and trust between you and your patients.

All information about patients acquired by any member of the dental team in their professional capacity is confidential and should be protected from unauthorised disclosure.

In general, this means that unless a patient gives their consent:

- the patient relationship must not be discussed with a third party
- records of the relationship must not be released to a third party.

Specific and exceptional circumstances to these rules can be found within this section.
As a dental professional you have a professional, legal and contractual responsibility to protect your patients’ confidentiality. The fact that someone is your patient is confidential. Your duty to respect confidentiality continues after a patient’s death.

Key points
1. The General Dental Council (GDC) states in its Standards for the Dental Team (2013) Standard 4.2 that all dental professionals must ‘Protect the confidentiality of patients’ information and only use it for the purpose for which it was given’. A breach of confidentiality may result in a finding of impaired fitness to practise and removal from the relevant GDC register.
2. All patients have a right to confidentiality. If a patient alleges a breach of confidentiality, they may be able to claim damages in a civil court.
3. The Data Protection Act 1998 (DPA) regulates the collection, processing, use and disclosure of personal data. Personal data is defined as data which relates to a living individual who can be identified from that data, or from a combination of that data and other information in the possession of the data controller. The data controller is the person who determines the purposes for which, and the manner in which, personal data is processed.
4. Health records, whether in computer or manual form, or a mixture of both, comprise data which are covered by the DPA. Health records are defined as any record which consists of information relating to the physical or mental health or condition of an individual, made by or on behalf of a dental professional in connection with the care of that individual. The DPA recognises an individual’s rights to know what information is being processed about them and to restrict its disclosure. A breach of the DPA can result in civil or criminal proceedings. (See section 4.3 Data protection legislation).

The DPA is intended to protect against unauthorised processing or disclosure of personal data.
5. The Access to Medical Reports Act 1988 (as amended by DPA) also applies to reports about dental patients. A purpose of this Act is to enable individuals to see reports written about them, for employment or insurance purposes, by a registered dentist whom they usually see in a ‘normal’ dentist/patient capacity. The patient can ask you not to send a report.
6. The Access to Health Records Act 1990 Section 3 (1) states that where a patient has died, an application for access to a health record, or to any part of a health record, may be made to the record holder by the patient’s personal representative and anyone who may have a claim arising out of the patient’s death.
7. In paragraph 4.2.2 of its Standards for the Dental Team (2013), the GDC states that ‘You must ensure that non-registered members of the dental team are aware of the importance of confidentiality and that they keep patient information confidential at all times’. This also includes the use of social media. Paragraph 4.2.3 states: ‘You must not post any information or comments about patients on social networking or blogging sites. If you use professional social media to discuss anonymised cases for the purpose of discussing best practice you must be careful that the patient or patients cannot be identified.’

If a member of the dental team breaches the confidentiality of an NHS patient, they may be disciplined by the primary care organisation (PCO) or hospital trust.

Our advice
Information relating to a patient must be kept secure at all times. Written records should be stored in locked cabinets. Computer screens with patient information should not be visible to anyone other than authorised personnel. Reception areas and surgeries should be planned in such a way that conversations about confidential matters cannot be overheard by a third party. This applies both to telephone calls and face-to-face conversations.

Checklist
- Do members of your dental team have an appropriate clause in their employment contract stating their obligation to respect and actively protect patient confidentiality?
- Have you considered outlining in your practice literature the patients’ right to confidentiality and the practice’s duty to protect it?
- Does your practice induction programme include the importance of patient confidentiality? Is on-going training provided?
Before releasing information about a patient to a third party, you must obtain the patient’s permission, save in exceptional circumstances. Permission should preferably be given in writing, although oral consent is also valid and should be recorded in the patient’s notes.

Key points
1. Competent patients may give or withhold permission to disclose information about them. If you want to use patient information for any other reason, you must explain and check the patient understands:
   • who the information will be released to
   • what information you will be releasing
   • how it will be used
   • why you will be releasing it
   • the likely consequences of you releasing the information.

   You should only release the minimum information required for the purpose and ensure the patient remains anonymous if it is not necessary to identify them. You should also ensure that third parties receiving information know it is confidential. Patients must be given the opportunity to withhold their permission and be told they can withdraw it at any time.

2. A patient’s refusal should be respected unless there is an overriding public interest such as when not releasing information would put the patient’s safety or that of others at serious risk. It is usually necessary to have consent of a patient to involve social services, but it may sometimes be necessary to share information with social services without consent e.g. if a person who can give or withhold consent is a victim of abuse. (See section 3.5 When consent is withheld).

3. If you believe it is in the public or patient’s interest to release information, you should still encourage the patient to give their permission, unless seeking permission would undermine the purpose of disclosure. You must document the efforts you have made to get consent in the patient’s notes. If they still refuse, call our advisory helpline before releasing the information.

4. Adults with parental responsibility under the provisions of the Children Act 1989 and Adoption and Children Act 2002 can give authority for disclosure for children under 16 who are not Gillick-competent. The overriding consideration, however, must be what is in the child’s best interests. (See section 3.10 Consent and children under 16).

5. It would be unusual to release information on the authority of a person with parental responsibility in relation to a competent child who objects to disclosure. In the event of such a conflict, you should be able to resolve the matter through discussion with the child and parents or others with parental responsibility.

6. Patients with a learning disability or mental disorder, even if detained under the Mental Health Act 1983, may still have capacity to consent to or refuse the release of information.

Our advice
Although the confidentiality of Gillick-competent children should be respected, you should encourage them to involve parents or guardians in their decisions, particularly if the treatment proposed is extensive or costly.

If a school seeks confirmation that a pupil has booked or attended a dental appointment, information should not be given without the permission of the patient, or person with parental authority in the case of a non-Gillick competent child. On the request of a Gillick-competent child or adult with appropriate parental authority, you may sign a child’s appointment card to confirm their attendance. However, in general it is up to schools to confirm that a child has booked or attended a dental appointment with someone who has parental authority for the child, rather than the dental practice.

Checklist
- Have you obtained permission to release information, ideally in writing, from the patient? If oral consent is obtained, have you recorded this in the patient’s records?
- Have you explained to the patient what information you will be releasing and why, who the information will be released to, and the likely consequences?
- If it is necessary to release information about an adult without capacity, are you sure that good, contemporaneous notes have been made in the records detailing why it is necessary and in the patient’s best interest, and how you reached your decision?
7. In assessing whether the patient has capacity, the following criteria apply.
   • The patient is able to **understand** information relevant to the decision to disclose. Relevant information should be presented to the person in a way that is appropriate to their circumstances.
   • The patient must be able to **retain** this information for long enough to make the decision.
   • The patient must be able to use, or weigh up, the information as part of the process of making the decision.
   • The patient must be able to communicate their decision.

   The **Mental Capacity Act 2005** (MCA) states that everyone must be assumed to have capacity unless it is established that they lack it.

8. In the case of patients aged 16 or over who lack capacity to authorise the release of information, decisions on disclosure of information should be made in the patient’s **best interests**, applying the principles in the MCA. This includes seeking the views of family and carers. (See section 3.7 Making decisions on behalf of adults lacking capacity).

9. If you wish to release a dead patient's records, you will need to obtain authority from an executor of the estate or the patient's personal representative. Anyone with a claim arising out of a patient’s death may also be entitled to see the patient’s dental records under the **Access to Health Records Act 1990**.

Reference
1 Gillick v West Norfolk and Wisbech AHA (1986) 3 All ER 402-437
There are many third parties who may request confidential patient information from dental professionals or with whom you may wish to share such information. Each case needs its own consideration.

Key points

1. **Relatives and carers** You may share information with those helping to care for a patient with the patient's permission. If the patient is unable to give permission, then you may share such information as is necessary, provided it is in the patient's best interests.

2. **Other healthcare workers** Patients should understand why and when information about them might be shared with others involved in their clinical care. You should only share information on a “need-to-know” basis, and you must respect a patient's objections to such information-sharing.

3. **NHS bodies** Primary care organisations or the NHS Business Services Authority (Dental Practice Board in Scotland; Central Services Agency in Northern Ireland) have certain rights to see NHS General Dental Services records for purposes such as verification and audit. Dentists should comply with their lawful requests, but only subject to patient consent. Some NHS claim forms include an authority to disclosure of records to the relevant NHS authorities.

4. **The General Dental Council** (GDC) may require a dental professional to produce patient records as part of its fitness to practise procedures. However, patient consent to such disclosure should still be sought.

5. **The Care Quality Commission**, the health and social care regulator for England, and the **Welsh Assembly Government** have legal powers to require NHS healthcare professionals to provide relevant information, including personal records. Anyone not complying may face a fine.

6. **Insurance companies and private dental funding schemes** When asked to submit reports to employers or insurers, you should seek permission and check if the patient wishes to see the report before it is sent. You should explain to the patient the extent of the information to be disclosed and the fact that relevant information cannot be concealed or omitted.

7. **Social services** Consent is usually required before disclosing information to social services. However, there may be occasions when it is necessary to disclose information about a patient without consent, either because the patient lacks capacity and it is in the patient's best interests or is otherwise in the public interest. You should do everything you can to inform your patient when information about them is shared.

8. **The police** do not have a right to information about patients. They have no power to secure dental records using a search warrant or a production order from a court. However, there are specific provisions which require disclosure e.g. S172 of the **Road Traffic Act 1988** and S38B of the **Terrorism Act 2000**. Information may be released to the police if it is in the public interest. If you have information that a patient is or could be at risk of significant harm, or you suspect they are a victim of abuse, you should ordinarily inform the appropriate social care agencies or the police. See the GDC website for further guidance.

**Our advice**

Record fully any decision to share information in your patient's notes. Be prepared to explain and justify your decisions and actions. If in doubt, call our advisory helpline before releasing any information.

**Checklist**

- Are you clear about the legal, clinical and ethical grounds of information-sharing where a request to release information has been made?
- Where a decision to release information has been agreed or made, have you ensured that only the minimum information necessary is disclosed?
- Are the names of other patients blanked out when diaries and appointment books are being disclosed?
- Have all documents for your financial audit and administration been anonymised?
9. Solicitors Disclosure to solicitors (other than those acting for the patient) requires the patient’s specific consent, unless the solicitors provide proof of a court order requiring disclosure.

10. Courts, tribunals and coroners A judge and presiding officers at tribunals can make an order to produce confidential documents. The coroner has a right of access to a deceased patient’s records.

11. Inland Revenue Tax inspectors have legal powers to obtain documents under the Finance Act 2008, Schedule 36, Part 1. They may request any information or documents it is reasonable for them to have to assist them in checking a taxpayer’s position. They must give notice in writing of the information they require. The dental professional would need to be satisfied that such information is reasonably required as Section 19 of the Schedule places limits on the disclosure of personal (i.e. medical) information.

12. Publication, research and audit Personal information cannot be published without a patient’s consent. Data for research must be anonymised, unless a patient has given consent. Documents for financial audit and administration should be anonymised and kept separate from clinical records.

13. Appointment books and diaries Disclosure of information contained in appointment books and diaries risks breaching the confidentiality of other patients.