

Data Protection and Chaplains' Access to Patients

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These briefings are compiled by the Healthcare Reference Group of the Catholic Bishops' Conference of England and Wales, and are written by serving health professionals, researchers and policymakers.

Key Points

- Chaplains need access to information on patients in order to discharge their duty to identify and deliver spiritual care to people in hospital.
- At present the interpretation of the Data Protection Act and the Caldicott Guidance Act as a barrier to this.
- There are ways round this but there seems to be a lack of will to address this. Scotland has already found a way round it.

The Problem

Chaplains need access to their patients to provide effective care. NHS policy frameworks (see Parliamentary Briefing 1) supports this. But Chaplains in many trusts are not able to access data because of the way the Trust interprets the Data Protection Act 1998 and the Caldicott Guidelines (the NHS guidance on patient confidentiality.) This is blocking Chaplains from providing effective care.

The current view in England is that Chaplains are not able to take advantage of the exemption in Schedule 3 of the Data Protection Act 1998, which allows sensitive personal information about patients to be processed without explicit consent, where that processing is necessary for medical purposes. This is because chaplaincy is not deemed to be included in the definition of 'medical purposes'. The Information Commissioner takes the view that this definition is not wide enough to include spiritual care.

The Consequences

The consequence of this is that because of confusion in interpretation, people are being denied access to the benefits of spiritual care.

- People have spent time in hospital without Chaplains knowing and without them receiving spiritual care. The Chaplain has only been made aware when the person returned home.
- In some cases Chaplains have to set up systems with local parishes to get information on who is going into hospital. But this is not perfect, and people.
- It is perfectly possible that people have died without access to a Chaplain, because of the restrictive interpretation of this legislation.
- The situation is fast becoming one where there is an institutional inequality of access to care for Catholics.



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If NHS Trusts fail to set up an adequate system for allowing patients to be asked about their spiritual care whilst in hospital and to register their consent for this information to be passed on, they could themselves be liable under The Human Rights Act 1998, should a patient claim that s/he was denied the right enshrined in Article 9 of the ECHR to manifest his or her religion, in worship, teaching, practice and observance.

The Solution

The Secretary of State and Information Commissioner could issue joint guidance which would remedy this. The current block on this is getting the two functions to work together towards a less restrictive interpretation.

Scotland already has found a way round this¹. The NHS Scotland guidance on confidentiality suggests a policy of opting out is within the spirit of the Data Protection Act and Caldicott guidelines.

“As part of the health care team, chaplains are under the same duty of confidentiality as all other health care professionals. Informed consent is the ideal. In order to provide spiritual care, a certain level of information is required. However, on occasion more comprehensive information will be required. All patients should be informed that they have the right to withhold personal information such as religious affiliation and that if they do not exercise this right, this information will be passed to the spiritual care department²”

The view of the Church is that Data Protection is important, and confidentiality too. But Chaplains need to be trusted to act professionally and should be included in the professions who can access patient data to be able to deliver their service. Otherwise the situation arises of the NHS commissioning a service which its own frameworks prevent the delivery of.

What can MPs do?

- MPs could conduct an inquiry on this or lobby Ministers to act.
- Serving Chaplains from all the faith groups would provide advice and support on the detail.

For further information about our work contact us

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¹ See the NHS Scotland guidance on spiritual care http://www.sehd.scot.nhs.uk/mels/HDL2002_76.pdf

² See the NHS Scotland policy at <http://www.confidentiality.scot.nhs.uk/religion.htm>

