



Information Sharing Policy

Review Date 28th November 2019

Next Review Due 28th November 2021

Physiotherapy2fit Ltd is committed to ensuring that, as far as it is reasonably practicable, the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on the basis of their age, disability, gender, race, religion/belief or sexual orientation. Should a member of staff or any other person require access to this policy in another language or format (such as Braille or large print) we will do our best to provide this in a format the user is able to access. Physiotherapy2fit Ltd will do its utmost to support and develop equitable access to all policies. The Director is responsible for ensuring staff are aware of Physiotherapy2fit Ltd policies and that staff adhere to them. It is also the Director's responsibility to keep staff up to date with new policy changes.

Staff are responsible for ensuring they are familiar with policies, know where to locate the documents on Physiotherapy2fit's main website, and seek out every opportunity to keep up to date with them

Independent contractors are expected to identify a lead person to be responsible for ensuring staff employed within their place of work are aware of Physiotherapy2fit Ltd policies.

Responsibilities

Physiotherapy2fit is accountable for the decisions it makes to pass on information to another agency or individual. The director assuming the role of Caldicott Guardian, is the officer responsible for overseeing all aspects of confidentiality and security in relation to patient-identifiable information, will monitor the implementation of this Policy within Physiotherapy2fit.

All employees or authorised personnel that agree to share information are obliged to adhere to the Policy and associated Protocols. The unauthorised passing on of information pertaining to any individual is a serious matter. Unauthorised disclosure warrants consideration of disciplinary action by the employer against individual employees and risks legal action by others. Health professionals may also be subject to action by their regulatory bodies.

Operationally, information-sharing decisions will be made by the professional responsible for an individual's assessment, care or treatment, or on the advice of the director.

The Director is responsible for ensuring that the staff are aware of, and adhere to, this Policy. They are also responsible for ensuring staff are updated in regard to any changes in this Policy.

Physiotherapy2fit identifies a senior employee at all locations of services to ensure that this Policy is accessible and followed.

The Policy will be made available on Physiotherapy2fit's website.

Legal and Guiding Principles Legal Principles

The sharing of patient identifiable information by Physiotherapy2fit is subject to 2 major legal considerations. These principles are outlined briefly below.

The Common Law Duty of Confidentiality: information covered by this policy will be covered by a duty of confidence owed by the Agency holding the information to the patient. As a result, this information may, in general, only be shared with another Agency with the consent of the patient or where the information has been properly anonymised. In exceptional circumstances, information may be shared where that would be in the “substantial public interest”. Confidentiality can also be overridden or set aside by legislation.

The Data Protection Act 1998: this Act provides a framework that governs the processing (including sharing) of information capable of identifying living individuals. The Act imposes constraints on how data is processed under eight data protection principles. The most significant principles are that:

- Processing is fair and lawful
- Processing must be for one or more specified and lawful processes
- Information covered by the Act must be protected against unauthorised processing and accidental loss or damage.

Guiding Principles

The Guiding Principles are based on the six principles of good practice for information sharing identified by the Caldicott Report,

The ‘Need to Know’ Basis

- Sharing information should be on a ‘need to know’ basis in line with Caldicott Principle 4:
- what is the purpose of the disclosure?
- what are the nature and the extent of the information to be disclosed?
- to whom is the disclosure to be made (and is the recipient under a duty to treat the material as confidential)?
- is the proposed disclosure a proportionate response to the need.

Patient information must be protected. Consequently, before information is shared, Physiotherapy2fit will ensure that the information will be used and stored properly by the recipient Agency. Information Sharing Agreements are designed to formalise this process.

Sharing Information with consent

Sharing of information should, where possible, be with the consent of the patient.

Patients should be informed of the purposes for which information about them may be recorded and shared. It is only with sufficient information that consent may be given. How Agencies might go about conveying that information is discussed further in section 6 below.

Patients should be given an opportunity to express their wishes as to how information should be used and these wishes should be respected where possible.

Sharing Information without consent

If a patient refuses to give consent to sharing information, the individual's view should be respected except where disclosure is lawful without their consent.

The following are examples of situations in which disclosure may be lawful without the consent of the patient:

- When the information is required by statute or court order
- When disclosure is in the substantial public interest. This category of circumstances is not closed but the more common situations in which it will apply are:
 - When there is a serious risk to public health
 - When there is a risk of serious physical/mental harm to the individual or those known to the individual.
- For the prevention, detection or prosecution of serious crime
- Where disclosure is necessary to protect vital interest i.e. where there is knowledge or belief of abuse or neglect of a child or vulnerable adult.
- Circumstances detailed in any Dangerous Persons policy or guidance.
- Where the disclosure is otherwise lawful e.g. covered by section 60 of the Health and Social Care Act

A decision to share or disclose information without consent **must** be recorded in detail, giving reasons for the decision made. The individual **must** be informed of the disclosure if he or she has the capacity to understand unless to do so would cause serious harm to the individual or someone known to them or would prejudice the outcome of a criminal investigation or court proceedings.

Sharing Information for Purposes Other Than Treatment

Physiotherapy2fit will, with the consent of the patient, recognise the significant role of carers by providing appropriate information to them. The exact nature of such information will depend upon individual circumstances and the arrangements made in local protocols and agreements pursuant to this policy.

Information that is disclosable by statute must be passed on by, or in consultation with, the professional responsible for the care of the individual. If in doubt, the advice of the director must be sought.

When deciding what constitutes a "serious" crime, Physiotherapy2fit will use as a guide the "serious arrestable offences" as defined in section 116 of the Police and Criminal Evidence Act 1984. These serious arrestable offences.

Prior to releasing information for the protection of the public, the particular circumstances will be fully considered.

In deciding whether sharing information is in the public interest, Physiotherapy2fit will consider whether the release of the information to protect the public should prevail over the duty of the confidence to the individual. In such circumstances, the advice of the director must be sought.



Where there is any doubt about passing on information that may be disclosed by statute, or in any other circumstances that may justify passing on information without consent or statutory authority, the advice of the director must be sought. The Director will, in certain circumstances, wish to seek legal advice, particularly if disclosure may result in a risk to the health of the individual or others known to them. The relevant professionals must be informed as soon as possible that information has been passed on, and the disclosure sufficiently documented in the appropriate records including those of the patient. The individual must also be informed, unless to do so would cause serious harm to the individual or someone known to them or would prejudice the outcome of a criminal investigation or court proceedings.

Compliance with Legal Restrictions and Obligations

Physiotherapy2fit and its staff have a responsibility to ensure that they comply with statutory and regulatory requirements in providing access to information relating to individuals. By following the principles and procedures described in this Policy and associated Protocols, Physiotherapy2fit will be compliant with:

- The Common Law Duty of Confidence
- Data Protection Act 1998
- Human Rights Act 1998
- GDPR legislation

Patient Consent

Consent to share information must be sought from patients in a sensitive manner. At all times the rights, interests and dignity of the patient must be respected. Patients must have the opportunity to discuss any aspects of information sharing that are specific to their treatment and personal circumstances.

Procedures for seeking consent will vary between agencies. It is essential that Physiotherapy2fit provides advice to patients in the form of a leaflet about how health and care records are kept, who can access them and how they are used.

Physiotherapy2fit will inform patients of how information will be used before they are asked to provide it. This includes informing patients of the kinds of purposes for which information about them is collected, and the types of people and agencies to which information may need to be passed, such as clinicians. All patients will be asked to sign a consent form allowing us to share information with any relevant parties to their individual case.

A standard form will be used to record a patient's consent to share information and to ensure a consistent approach to consent seeking. A sample Consent to Share Information form is in the appendix.

Consent should be sought at the earliest opportunity. This should be at the first contact with the patient unless the patient is unable, at that time, to comprehend the procedures or make an informed judgement. Cases in which the patient is incapacitated are dealt with below.

Once consent to share personal information has been obtained, it will be assumed to continue unless the patient withdraws consent but will be limited to the purposes for which consent was



given.

A patient's case file or other personal record should always be checked for evidence of consent before personal information is shared with another agency.

Physiotherapy2fit recognises that it is not practicable to seek a patient's (or other informant's) specific consent each time information needs to be passed on for the routine functions of Physiotherapy2fit to be carried out. However, patients should be aware of the purposes to which information about them may be put. The use of leaflets, posters or other forms of advertising may achieve this (see point 6.5 above). Practically speaking, these measures should mean that a patient is not surprised to find out how information about them has been used by Physiotherapy2fit and that a patient should be able to object to that use should they wish to. If these conditions are not met then the sharing of information may be in breach of confidence or the Data Protection Act 1998. Physiotherapy2fit staff should take further advice if there is any doubt over the circumstances surrounding such disclosures.

Refusal of Consent

Individuals have the right to object to the information they provide in confidence being disclosed to a third party in a form that identifies them, even if the third party is someone who might provide essential healthcare. Where individuals are competent to make such a choice and where the consequences of the choice have been fully explained, the decision should be respected. This is no different from a patient exercising his or her right to refuse treatment.

There are a number of issues to consider if a patient refuses to consent to information sharing:

- The concerns of the individual must be clearly established and attempts made to find out whether there is a technical or procedural way of satisfying these concerns without unduly compromising care.
- The options for providing an alternative form of care or to provide care through alternative arrangements may need to be explored.
- Decisions about the options for alternative arrangements that might be offered to the patient have to balance the risks, staff time and other costs that may result against the risk to the individual of not providing assessment, care or treatment.

Careful documentation of the decision-making process and the choices made by the individual **must be documented** in the individual's records.

Consent cannot be obtained (for reasons other than refusal)

In some circumstances it may not be possible to obtain consent because, in the opinion of the person responsible for the patient's care or well-being, the patient:

- is too ill
- does not have the capacity to understand what he or she is consenting to,
- the situation is urgent and the individual cannot be located to obtain consent

In such cases, Physiotherapy2fit recognises that it may be necessary to share information with other agencies so that appropriate care and treatment can be provided to the individual, or in exceptional circumstances where disclosure would be in the public interest - for instance where disclosure of the information is necessary to prevent harm coming to another individual.



When seeking consent from individuals whose disabilities or circumstances prevent them from being informed about the likely uses of their personal information, it may be necessary to provide advice to the individual in a suitable format or language that is accessible. Checks must be made to ensure that the advice has been understood. Consent, or refusal of consent must then be documented in the individual's case records.

Some individuals may have difficulty communicating their decision to give consent or to withhold it. In this case, a clear and unambiguous signal must be provided of what is desired by the individual. Confirmation of the choice made may be obtained by repeating back the choice so that the individual can indicate assent. Failure to provide such support could be an offence under the Disability Discrimination Act 1995 and may prevent valid consent from being gained.

If an individual is unconscious or unable, due to a mental or physical condition, to give informed consent or to communicate a decision, the professionals concerned must take decisions about the use of information. This will take into account the individual's 'best interests' and any previously expressed wishes, informed by the views of relatives or legally responsible persons as to the likely wishes of the individual. Consent, or refusal of consent, must be documented in the individual's case records.

Individuals may be asked to indicate the person they would like to be involved in decisions about their care should they become incapacitated.

This will normally, but not always, be the 'next of kin' or their carer. Limited information, on the basis of 'need to know' or 'best interests' of the individual, may be shared with that person provided the individual does not object. This gives individuals the opportunity to agree to disclosures or to choose to limit disclosure, if they so wish.

Where consent cannot be gained because it is not practicable to locate or contact an individual, this must be well evidenced and documented.

Sharing information when abuse of vulnerable adults is suspected

Confidentiality

The duty to report abuse of vulnerable adults over-rides the normal responsibility to respect confidence. The following principles from the Caldicott Committee "Report on the review of patient-identifiable information" apply.

- The interests and welfare of the adult at risk are paramount
- Information will only be shared on a "need to know" basis when it is in the best interests of the patient
- Confidentiality must not be confused with secrecy
- Consent to share information should be sought, but if this is not possible and other vulnerable adults are at risk, it may be necessary to over-ride the requirement
- It is inappropriate for agencies to give assurances of absolute confidentiality in cases where there are concerns about abuse, particularly those situations where other vulnerable people may be at risk



- Disclosure of personal information will need to be in accordance with the Data Protection Act 1998 where this applies

Acting in a persons best interests

The White Paper “Making Decisions” suggests the following factors to be considered in determining persons best interests:

- The ascertainable past and present wishes and feelings of the person concerned and the factors the person would consider if able to do so
- The need to permit and encourage the person to participate or improve his or her ability to participate as fully as possible in anything done for and any decision affecting him or her
- The views of other people whom it is appropriate and practical to consult about the person’s wishes and feelings and what would be in his or her best interest
- Whether the purpose for which any action or decision is required can be as effectively achieved in a manner less restrictive of the persons freedom of action
- Whether there is a reasonable expectation of the person recovering capacity to make the decision in the reasonably foreseeable future
- The need to be satisfied that the wishes of the person without capacity were not the result of undue influence

Children and young people

Young people aged 16 or 17 are regarded as adults for the purposes of consent and are therefore entitled to the same requirements for confidentiality as adults. Physiotherapy2fit will ensure that consent for the sharing of information with other agencies is obtained from young people aged 16 or 17 on the same basis as adults.

Physiotherapy2fit acknowledges that children under 16 who have the capacity and understanding to take decisions about their own treatment are also entitled to decide whether personal information may be passed on and to have their confidence respected. Children should be encouraged to discuss such decisions with their parents. In the event the parents request information about the treatment of a competent child who has stated that he does not want that information disclosed, further advice must be sought.

In other instances, decisions to pass on personal information may be taken by person(s) with parental responsibility in consultation with the professionals involved. In these circumstances, Physiotherapy2fit will confirm that those persons do, in fact, have parental responsibility and ensure that their consent for the child is obtained prior to the sharing of information with another agency.

Physiotherapy2fit will share any necessary information with relevant agencies without the consent of those with parental responsibility if a health professional (or other member of staff) has knowledge of abuse or neglect of a child.

Sharing information amongst practitioners working with children and their families is essential. In many cases it is only when information from a range of sources is put together that a child can be seen to be at risk of harm. It is often helpful to discuss such concerns with a senior colleague,



child protection advisor or the Caldicott guardian. This clear expectation of all professionals working with children or adults is set out in the booklet - 'What to do if you think a child is being abused' DoH 2003.

Physiotherapy2fit will ensure that information regarding individuals who pose a risk to children will be disclosed under Child Protection Procedures established under the Children Act 1989 and 2004.

Patients' Access to their own Records

Individuals, subject to certain safeguards, have a right to access their personal records under the Data Protection Act 1998. Physiotherapy2fit will ensure that it complies with the requirements of the Data Protection Act 1998 in terms of requests to access personal identifiable information.

Physiotherapy2fit will have in place procedures to be followed when patients, (or their representatives), request access to their personal records. It is the responsibility of Physiotherapy2fit's Administrator to track every request for access to ensure that the correct information reaches the person making the request on or before the statutory 40 calendar day deadline, as required by the Data Protection Act 1998.

Physiotherapy2fit will also provide general information to patients about access to health and social care records and the procedures to be followed when requesting access. Agencies may find it helpful to provide a leaflet providing patients with general guidance.

Deceased persons

Although the Data Protection Act 1998 does not apply to records of deceased persons, the Access to Health Records Act 1990, the Common Law duty of confidence and Caldicott Principles do apply. Thus the security and confidentiality of records of deceased individuals will be accorded the same level of respect as outlined in this protocol.

Breaches of the protocol

If a breach of the protocol occurs each organisation must:

- Log the incident and investigate. All incidents must be reviewed and monitored to ensure compliance of the protocol in future. Incidents will be categorised to highlight why they have occurred e.g. lack of training, misunderstanding of requirements, or problems with technology.
- Inform all relevant agencies affected by the breach including the Caldicott Guardians.

Indemnity

Disclosure of personal information without consent must be justifiable on statutory grounds or meet the criterion for claiming an exemption under the Data Protection Act. Without such justification, both Physiotherapy2fit and the member of staff expose themselves to the risk of prosecution and liability to a compensation order under the Data Protection Act or damages for the breach of the Human Rights Act.



Dealing with the media

Physiotherapy2fit should have an established policy and operational procedures for proactive and reactive contacts with the media. All media contacts should be directed to the director. If the contacts involve information that may or does identify individuals directly or indirectly, the staff will consult the director for advice.

In responding to media contacts Physiotherapy2fit will liaise with other partner agencies who are involved in the care of the individual(s) to whom the contact relates.

The rules of confidentiality concerning personal information apply in dealing with the media. Information that identifies an individual will only be passed to the media with the specific consent of the individual.

Where an individual is unable to make a decision, the provision of basic information may sometimes be judged to be, in exceptional circumstances, in the public interest. Where possible, carers and/or relatives will also be consulted before the release of any information so as to have regard to their own circumstances and feelings. In any 'best interest' disclosure of information to the media, the Agency must be prepared to justify a decision to release information. Any such disclosure will only take place with the approval of the Caldicott Guardian after consultation with relevant agencies and individuals involved in the assessment, care and treatment of the individual.



CONSENT FORM



| | | |
|--------------------------|-------------------|---------|
| Your name: | | |
| Your address: | | |
| Your telephone number(s) | Home: «HomeTelNo» | Mobile: |
| | Work: | Other: |
| Your date of birth: | «DOB» | |

| | |
|--|--|
| General Practitioner's name/Practice Code: | |
| General Practitioner's address: | |
| General Practitioner's telephone | |

Explanation of the Physiotherapy2fit Service

Physiotherapy2fit have been appointed to assist in managing your recovery. Administered by medically qualified staff, Physiotherapy2fit offer practical means to help you recover in the shortest yet safest possible time.

We are able to assist with the recovery of musculoskeletal conditions. Provision of this service is entirely at our discretion. This service is in addition to and will compliment any treatment you are currently receiving or due to receive.

Your declaration and signature

Pursuant to the provisions of the Data Protection Act 1998 *, I hereby:

- Consent to the release to Physiotherapy2fit of personal data (including health and medical records) in relation to my condition for the purpose of assessment, treatment and reporting on my health and fitness for work. This consent extends to the clinician who will treat my condition. I understand that Physiotherapy2fit will report to my GP or referring practitioner/Insurer/Employer/PMI Provider details of any clinical assessment and treatment recommended and/or undertaken by Physiotherapy2fit in respect of my condition.



- Consent to the release of appropriate medical reports to treating clinicians arranged through Physiotherapy2fit in as much as Physiotherapy2fit considers it to be beneficial for my treatment, OR
- Extend this consent to include private clinicians authorised by Physiotherapy2fit to carry out my treatment.

Signed:

Date:

Name (please
print):