

ICO consultation on draft employment practices guidance – information about workers’ health

GMC response

Introduction

The Information Commissioner’s Office (ICO) is producing an online resource with topic-specific guidance on employment practices and data protection. The draft guidance aims to provide practical guidance about handling the health information of workers in accordance with data protection legislation and to promote good practice.

Our response

Sent via email

We appreciate the opportunity to comment on your draft guidance on *Employment practices and data protection: information about workers’ health*. As you are aware, we provide guidance on the professional standards expected of doctors across the UK, including our core guidance on *Good medical practice, Decision making and consent* and *Confidentiality*.

Our guidance

In our guidance on [Confidentiality](#), we highlight that doctors owe a duty of confidence to patients. We are clear that if doctors want to share personal information about patients, they must have a legal basis for doing so, (see paragraph 9).

We also provide guidance on [Disclosing information for employment, insurance and similar purposes](#). In this we recognise there can be circumstances in which doctors face dual obligations when asked to disclose personal information about patients, either from existing records or following an examination. This means that they have obligations to both the patient and to the person or organisation who has requested that information, which may be an employer. In those circumstances, we again emphasise that doctors must have a legal basis for sharing that

information. We say doctors will need the consent of the patient, the disclosure required by law or the courts, or judge that on balance the disclosure is justified in the public interest.

ICO Draft Guidance

The draft guidance is helpfully arranged into sections to enable doctors to navigate to relevant sections quickly. As I am sure you are aware, one of the most frequent issues which come up in the context of medical confidentiality is the lack of awareness of the dual frameworks which doctors must uphold. We are therefore also pleased to see a reminder that the sharing of medical information in an occupational health setting is restricted by the common law duty of confidence, as well as data protection law (page 28). And we appreciate your reference to the guidance we provide on professional standards.

It would be helpful to link directly to our guidance on *Confidentiality*, which is consistent with both legal frameworks, as well as our explanatory guidance on *Disclosing information for employment, insurance and similar purposes*. This would be useful in both this section and where you later refer to the common law duty in a subsequent section on ‘when worker health information can be shared’ (page 45). Although you provide reference on page 45 to the earlier section, linking directly to our guidance in both sections would help doctors to navigate more swiftly to resources that will help them to comply with their common law and data protection responsibilities.

We would suggest that including further cross-referencing or links to relevant guidance on the common law duties, would also improve the ease of access and understanding of clinicians’ responsibilities at other points in your draft guidance. I have included some further examples below.

In the section ‘When might we need to process information about workers’ health,’ (page 7) you raise awareness of obligations under employment law, health and safety law and other legislation and under the section ‘How do we lawfully process the health information of workers’ you discuss lawfulness under GDPR. It would be helpful to insert an explicit reminder about the common law duty of confidentiality which doctors must also uphold and link to our guidance on confidentiality in both these sections.