

A Harvey PH6.1

From: Howard Roberts Sol C4

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cc : M O'Mahony PH6

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**Disclosure of Information relating to Blood Donation by CJD
Patients**

1. Michael Adam has passed your minute of 28 February to me. I advise on confidentiality issues relating to patient information.
2. In your minute you ask about the legality of passing-on patient information about vCJD to a central registry. The short answer is that the only safe basis in law for passing on such information is informed patient consent. Ministers have also expressed their view that informed consent should these days be the norm for information sent to registries, as well as for other purposes which are not directly related to the treatment and care of the patient in question.
3. The doctrine of implied consent is being construed increasingly strictly, so that now it can only be relied on with confidence for those exchanges of information which relate directly to the care or treatment of the particular patient in question.
4. You may wish to be aware that ministers are seeking provision in the Health and Social Care Bill under which regulations may be made to permit the disclosure of certain patient information without consent. Ministers have said that they will appoint a panel to consider how the power should be exercised. They have also said that they expect those who wish to benefit from the statutory provision to put up a good case. I might also mention that the GMC have announced that from October they will be taking a firmer line with medical practitioners who disclose patient information without consent.

5. Until the new power is enacted, we need to consider the three principal legal constraints on disclosing information. Under the common law disclosing patient information may involve be a breach of the law on confidentiality, which would entitle an aggrieved patient to sue for damages. There may also be a breach of human rights requirements, such as the right to respect for private life (article 8) which could also give rise to litigation. Finally, there is the data protection legislation under which information about an individuals' health would be classed as sensitive personal data. Whilst in general data can only be used lawfully for the purposes for which it has been collected, there is more latitude in the case of sensitive personal data that is used for medical purposes.
6. Under the law as it stands, in my opinion particular disclosures might - depending on the facts - be defended but a general policy of disclosure without consent would present unacceptable legal risks.

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Ex GRO-C