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Confidentiality of sexual health patients' information – what has history taught us and where do we stand?

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Title: Confidentiality of sexual health patients' information – what has history taught us and where do we stand?

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The rights of patients to access confidential care, without referral from, or sharing of, information with general practitioners or other health care professionals, is a founding principle of sexual health care in England. Indeed, the progressive Public Health (Venereal Diseases) Regulations 1916, described by Harrison in the first edition of the British Journal of Venereal Diseases, continues to influence the way that sexual health care is provided today.

Much of the subsequent legislation relates to maintaining this confidentiality, in the context of a National Health Service (NHS) and changes in the structure of health authorities. For example, amendments over the century include that The NHS (Venereal Diseases) Regulations 1968 allowed the sharing of information on contacts of STIs between different services without requiring patients' consent, and The NHS (Venereal Diseases) Regulations 1974 regulations broadened the coverage from syphilis, gonorrhoea and soft chancre to all STIs.

Forty years later, there was a major shift in the legislative approach, with the repealing of previous regulations in England and the introduction of the Health and Social Care (Safety and Quality) Act 2015. A key component of this legislation seeks to use confidential identifiers (i.e. the NHS number) wherever possible. Following advocacy from professional and patient groups, anonymous access to sexual health services is still possible. However, this is not an obligation, with issues of confidentiality matching other areas of medicine. Linkage to NHS Number, where available and with patient's consent, could improve patient journeys across primary and secondary care and allows for more robust surveillance.

The impact of these most recent changes on services which are becoming increasingly stretched, fragmented and run by private providers has yet to be seen. Novel mechanisms of service delivery, such as eHealth, raise further issues. This is unlikely to be the end of the legislative road ...

¹Web appendix

Legislation in England 1916-2016

Legislation	Repealed	Meaning
Public Health (Venereal Diseases) Regulations 1916	Repealed by Public Health Act 1936 Regulations repealed by the National Health Service Act 1946	<ul style="list-style-type: none"> • Any medical practitioner to have free access to pathology samples for material from Patients with a Venereal Disease (PwaVD) • Each council had to set up facilities for, and provision of, treatment for PwaVD • “All information obtained in regard to any person treated under a scheme approved in pursuance of this Article shall be regarded as confidential” • VD was defined as syphilis, gonorrhoea, and soft chancre • Expenses to be incurred by the Council
Venereal Disease Act 1917	Statute Law (Repeals) Act 1998	<ul style="list-style-type: none"> • Only qualified medical practitioners allowed to treat PwaVD • Not allowed to advertise VD services
National Health Service (Venereal Diseases) Regulations 1948	Revoked by National Health Service (Venereal Diseases) Regulations 1968 (SI 1968/1624)	Clarified the position of confidentiality with the advent of the NHS. Reiterated need for confidentiality with respect to persons examined or treated for VD in a hospital.
National Health Service (Venereal Diseases) Regulations 1968	Superseded by The National Health Service (Venereal Diseases) Regulations 1974 (SI 1974/29)	Allowed staff at one clinic, once a contact had been traced and tested for STIS, to pass back their results to the clinic at which the index patient had been diagnosed without any need to obtain consent for this.
The National Health Service (Venereal Diseases) Regulations 1974	Health and Social Care (Miscellaneous Revocations) Regulations 2015 (SI 2015/839)	1974 Regulations– Every Regional Health Authority and every Area Health Authority shall take all necessary steps to secure that any information capable of identifying an individual obtained by officers of the Authority with respect to persons examined or treated for any STI shall not be disclosed except – <ul style="list-style-type: none"> (a) For the purpose of communicating that information to a medical practitioner or to a person employed under the direction of a medical practitioner in connection with the treatment of persons suffering from such disease or the prevention of the spread thereof, and

		(b) For the purpose of such treatment or prevention Broadened coverage to 'all sexually transmitted diseases'
The National Health Service Trusts (Venereal Diseases) Directions 1991	The NHS Trusts and Primary Care Trusts (Sexually Transmitted Diseases) Directions 2000	1991 - Directions were made imposing the same confidentiality obligations on trustees and employees of a National Health Service trust as the 1974 Regulations applied to health authorities.
The NHS Trusts and Primary Care Trusts (Sexually Transmitted Diseases) Directions 2000	National Health Service Act 1977 repealed by National Health Service Act 2006, s 8(1) and 273(1) Organisations mentioned in 2000 Directions no longer exist	Needed due to the reorganisation of the NHS: 'Every NHS Trust and PCT shall take all necessary steps to secure that any information capable of identifying an individual obtained by any of their members or employees with respect to persons examined or treated for any STD shall not be disclosed except....'
Health and Social Care (Safety and Quality) Act 2015 (Commencement No 1 and Transitory Provision) Regulations 2015 (SI 2015/1438) – in force in England from 25 June 2015 Health and Social Care Act 2012 (Consistent Identifier) Regulations 2015 (SI 2015/1439)		Set out a new duty on commissioners and providers of publicly funded health services and adult social care in England to include a "consistent identifier" (i.e. an NHS number) when processing the information about an individual insofar as the relevant person considers that the inclusion is (a) likely to facilitate the provision to the individual of health services or adult social care in England, and (b) in the individual's best interests. Exceptions to the duty to provide the NHS Number alongside other information include: where the patient objects to their information being shared, or their NHS Number being used; where the services they receive are given by an "anonymous access provider"; or where an individual does not have an NHS Number.