NIGB Position Paper on Smartcard Sharing

Introduction

The Board had raised concerns about the sharing of smartcards between NHS staff and any implications this might have for claims of clinical negligence and for clinical governance purposes. The Board had asked the Office to consult further with the regulators and the Medical Protection Society to find out their views on how the sharing of smartcards would affect claims for clinical negligence and in respect of regulators, fitness to practice investigations.

Consultation

Following consultation, the Medical Protection Society had responded that as clinical negligence claims are made against a Trust or GP practice that the individual responsibilities of clinicians should not affect this and that it would be the overall record of care relating to a particular episode or series of episodes that would be of concern rather than which individuals were responsible.

In relation to fitness to practice cases examined by the medical professions regulator, the General Medical Council has indicated that they would look at the evidence available and make a judgment based on the balance of probabilities. If there is insufficient evidence against an individual then there could be no sanctions imposed. So in the situation where a smartcard was found to have been shared and all the staff involved denied responsibility then the most that any individual could be accused of would be misusing a smartcard. However, the GMC do have the option to take misusing smartcards seriously. There have been cases previously pursued in relation to the sharing of log-ins and these have each been judged on a case by case basis. Where local arrangements do not support good data protection practice, however, the GMC is unlikely to pursue a case against a doctor solely for such record-keeping issues. If there were evidence of fraud or no mitigation because of the limitations of the information technology then the GMC could well bring a charge of impaired fitness to practice.

The Nursing and Midwifery Council’s Record Keeping Standards stipulate that smartcards are not to be shared and that doing so is a disciplinary offence.

The above therefore provides reasonable clarity in relation to clinical negligence claims but not wholly, in relation to overall clinical governance and fitness to practice.
Board Discussion

The Deputy Chair, Della Cannings, provided advice about how this issue was handled by Police Forces. Her advice was that the sharing of log-ins / smartcards is not tolerated and the individual whose log-in is used is personally responsible for any unauthorised access and disciplined accordingly. Access to the system is auditable and this would clearly be undermined by multi-use. IT systems need to be fit for purpose, to prevent poor practices being necessary to fulfil clinical need. Formal discipline in cases of abuse is undertaken and if proven would be regarded as gross misconduct and result in dismissal. Most forces have professional standards units that monitor usage and investigate unusual access and potential misuse.

The Board did acknowledge that NHS organisations have sought to mitigate the risks associated with sharing of smartcards by keeping a record of staff on duty in A & E etc in order to have a record of which member of staff may have accessed or written in the record at a particular time.

Recommendations of the Board:

1) The NIGB recommends that the sharing of smartcards be prohibited.
2) The NIGB recommends to NHS CFH that the current situation be reviewed so that any work required to address technical issues leading to smartcard misuse is prioritised.
3) The NIGB proposes that sanctions should be available for the sharing of smartcards where there is no or limited justification for doing so. Such exceptional circumstances, e.g. where there are patient safety considerations, should be authorised by the relevant organisation and where this is necessary such organisations should seek remedy for the underlying technical problems as a matter of urgency.
4) The NIGB recommends to the professional regulators and the Commission for Health Regulatory Excellence (CHRE) that the approaches with regard to smartcard misuse taken by the Nursing and Midwifery Council and by the police should be adopted as good practice.