

## CARD 8

### Children and young people's health information

#### **When is a duty of confidentiality owed to a child or young person?**

A duty of confidentiality is owed to all children and young people. The duty owed is the same as that owed to an adult.

#### **When is a young person competent to consent to the disclosure of his/her personal information?**

In [England](#), [Wales](#) and [Northern Ireland](#) children who are aged 12 or over are generally expected to have competence to give or withhold their consent to the release of information. In [Scotland](#), anyone aged 12 or over is legally presumed to have such competence.

Younger children may also be competent to make decisions regarding the control of their health information (see Card 2 on assessing competence). Health professionals should, unless there are convincing reasons to the contrary, for instance abuse is suspected, respect the child's wishes if they do not want parents or guardians to know about all or aspects of their health care (see Card 11 on child protection). However, every reasonable effort must be made to persuade the child to involve parents or guardians particularly for important or life-changing decisions.

### **Are there limits to confidentiality if a child lacks competence?**

The duty of confidentiality owed to a child who lacks competence is the same as that owed to any other person. Occasionally, young people seek medical treatment, for example, contraception, but are judged to lack the competence to give consent. A child's confidentiality should be respected when information is shared on the understanding that the information will not be disclosed to parents or guardians, or indeed to any third party, save in the most exceptional circumstances, for example, where it puts the child at risk of significant harm or there is a suspicion that the child is being abused, in which case disclosure may take place in the 'public interest' without consent. Therefore, even where the health professional considers a child to be too immature to consent to the treatment requested, confidentiality should still be respected concerning the consultation, although parental involvement should be encouraged, unless there are very convincing reasons to the contrary.

GMC guidance states that where a child who lacks capacity refuses disclosure if the doctors consider 'it is necessary in the child's best interests for the information to be shared (for example, to enable a parent to make an important decision, or to provide proper care for the child), you can disclose information to parents or appropriate authorities' (GMC. *0-18 years: guidance for all doctors*, paragraph 51).

Where a health professional decides to disclose information to a third party against a child's wishes, the child should generally be told before the information is disclosed. The discussion with the child and the reasons for disclosure should be documented in the child's record.

### **Can someone with parental responsibility refuse disclosure of a child's or young person's personal information?**

Anyone with parental responsibility can give or withhold consent to the release of information where the child lacks competence. Where an individual who has parental responsibility refuses to share relevant information with other health professionals or agencies and the health professional considers that it is not in the best interests of the child, (for example, it puts the child at risk of significant harm), disclosure may take place in the public interest without consent (see Cards 5 and 11 on best interests and child protection). Parents should usually be informed of the information and reasons in advance of a disclosure.

### **What if there are concerns a child or young person is at risk of abuse or neglect?**

Where health professionals have concerns about a child or young person who may be at risk of abuse or neglect, it is essential that these concerns are acted upon and information is given promptly to an appropriate person or statutory body, in order to prevent further harm (see Card 11 on child protection).

Children and young people may try and elicit a promise of confidentiality from adults to whom they disclose abuse. Doctors must avoid making promises

of confidentiality that they cannot keep. Where doctors believe that, in the interests of the child or others, it is important that action is taken, they need to discuss disclosure with the child, and, if possible, the child should be given sufficient time to come to a considered decision. If the child cannot be persuaded to agree to voluntary disclosure, and there is an immediate need to disclose information to an outside agency, he or she should be told what action is to be taken, unless to do so would expose the child or others to increased risk of serious harm.

### **Who can access a child's or young person's health record?**

Competent children and young people may apply for access to their own records, or may authorise others to do so on their behalf. It is not necessary for competent patients to give reasons as to why they wish to access their records.

Furthermore, anyone with parental responsibility has a statutory right to apply for access to their child's health records. If the child is capable of giving consent, access may only be given with his or her consent. It may be necessary to discuss parental access alone with children if there is a suspicion that they are under pressure to agree. (For example, the young person may not wish a parent to know about a request for contraceptive advice.) If a child lacks the competence to understand the nature of an application but access would be in his or her best interests, it should be granted. Parental access must not be given where it conflicts with the child's best interests and any information that a child revealed in the expectation that it would not be disclosed should not be released unless it is in the child's best interests to do so.

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Where parents are separated, and both have parental responsibility, and one of them applies for access to the medical record, doctors are under no obligation to inform the other parent, although they may consider doing so if they believe it to be in the child's best interests. It is advisable to make a note of when and who accessed the record.

If a child lacks competency the GMC advises that 'In any event you should usually let children access their own health records. But they should not be given access to information that would cause them serious harm or any information about another person without the other person's consent'.

### Key advice

- BMA. *Access to health records*. Available at [www.bma.org.uk/ethics](http://www.bma.org.uk/ethics)
- BMA. *Confidentiality and disclosure of health information tool kit*. Available at [www.bma.org.uk/ethics](http://www.bma.org.uk/ethics)
- GMC. *0-18 years: guidance for all doctors*. Available at [www.gmc-uk.org](http://www.gmc-uk.org)
- Northern Ireland Department of Health, Social Services and Public Safety. *Code of Practice on Protecting the Confidentiality of Service User Information*. Available at [www.dhsspsni.gov.uk](http://www.dhsspsni.gov.uk)
- Department of Health. *Confidentiality: NHS Code of Practice*. Available at [www.dh.gov.uk](http://www.dh.gov.uk)
- Scottish Government Health Directorates. *NHS Code of Practice on Protecting Patient Confidentiality*. Available at [www.ehealth.scot.nhs.uk](http://www.ehealth.scot.nhs.uk)