

INFORMATION SHARING WITH SEPARATED PARENTS

Some important information for you to note when you are asked by separated parents for information about their child:

- Parents may have access to their children's records if this is not contrary to a competent child's wishes. For children under 18 (in England) any person with parental responsibility may apply for access to the records;
- Please note that not all parents have parental responsibility. In relation to children born after 1 December 2003 (England and Wales), both biological parents have parental responsibility if they are registered on a child's birth certificate;
- In relation to children born before these dates, a child's biological father will only automatically acquire parental responsibility if the parents were married at the time of the child's birth or at some time thereafter. If the parents have never been married, only the mother automatically has parental responsibility, but the father may acquire that status by order or agreement;
- Neither parent loses parental responsibility on divorce;
- Where more than one person has parental responsibility, each may independently exercise rights of access. A common enquiry to the BMA concerns a child who lives with his or her mother and whose father applies for access to the child's records. In such circumstances there is no obligation to inform the child's mother that access has been sought.

Adopted Children

Where a child has been formally adopted, the adoptive parents are the child's legal parents and automatically acquire parental responsibility.

Parental Responsibility

In some circumstances people other than parents acquire parental responsibility, for example by the appointment of a guardian or on the order of a court. A local authority acquires parental responsibility (shared with the parents) while the child is the subject of a care or supervision order. If there is doubt about whether the person giving or withholding consent to access has parental responsibility, legal advice should be sought.

Refusal of Information (Practices as the Data Controller)

The holder of the record is entitled to refuse access to a parent, or an individual with parental responsibility where the information contained in the child's records is likely to cause serious harm to the child, or another person where:

- it is likely to cause serious physical or mental harm to the patient or another person; or it relates to a third party who has not given consent for disclosure (where that third party is not a health professional who has cared for the patient);
- it is requested by a third party and the patient had asked that the information be kept confidential;
- the records are subject to legal professional privilege or, in Scotland, to confidentiality as between client and professional legal advisor. This may arise in the case of an independent medical report written for the purpose of litigation;

- it is restricted by order of the courts;
- it relates to the keeping or using of gametes or embryos or pertains to an individual being born as a result of in vitro fertilisation;
- in the case of children's records, disclosure is prohibited by law, e.g. adoption records.

The data controller should redact, or block out any withheld information, and must be prepared to justify the decision to do so. The data controller may advise patients of the grounds on which information has been withheld, but is not obliged to do so. There is still an obligation to disclose the remainder of the records.

While the responsibility for the decision, as to whether or not to disclose information, rests with the data controller, advice about serious harm must be taken by the data controller from the appropriate health professional.

If the data controller is not the appropriate health professional, then the appropriate health professional needs to be consulted before the records are disclosed. This is usually the health professional currently or most recently responsible for the clinical care of the patient in respect of the matters which are the subject of the request. If there is more than one, it should be the person most suitable to advise. If there is none, advice should be sought from another health professional who has suitable qualifications and experience.

Circumstances in which information may be withheld on the grounds of serious harm are extremely rare, and this exemption does not justify withholding comments in the records because patients may find them upsetting.

Where there is any doubt as to whether disclosure would cause serious harm, we recommend that the appropriate health professional discusses the matter anonymously with an experienced colleague, the Caldicott guardian, or defence body.