Protecting children and young people: the responsibilities of all doctors

Draft for consultation
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All children and young people are entitled to protection from abuse and neglect. This guidance is provided to help doctors to keep children and young people safe, and to support them in what will always be a difficult area of practice.
Protecting children and young people can involve making decisions that are emotionally challenging, complicated by uncertainty and in conflict with the wishes of parents. Failing to intervene can have serious consequences for both children and their families. Investigations into concerns are invariably sensitive and potentially distressing for children and families, and, in some situations, may lead to complaints about doctors. There are no simple solutions. Doctors must be willing to make judgements in conditions of uncertainty, with appropriate advice and support. The interests of children and young people who are at risk must be doctors’ first concern, and doctors must act to protect them from abuse and neglect. In doing so, doctors must also consider the interests of parents and keep them informed about decisions.*

Where doctors act reasonably in response to concerns about abuse or neglect of a child or young person, following the principles in this guidance, they will not be subject to censure by the GMC, even if the concerns later prove to be unfounded. However, it is in the interests of the public and the profession for the GMC to investigate allegations that a doctor has acted incompetently or unethically.

This guidance is published with a paper explaining how the GMC’s fitness to practise procedures work, and how paediatricians are represented within them. You can access this paper on our website at www.gmc-uk.org/childprotection.

This guidance was developed in the light of written and oral evidence from a wide range of individuals and professional bodies about the roles and responsibilities of all doctors working to protect children and young people.

We are grateful to everyone that has taken the time to share their views and experiences with us.

* See JD v. East Berkshire Community Health Trust & Ors [2005] UKHL 23 (21 April 2005)

85. A doctor is obliged to act in the best interests of his patient. In these cases the child is his patient. The doctor is charged with the protection of the child, not with the protection of the parent. The best interests of a child and his parent normally march hand-in-hand. But when considering whether something does not feel ‘quite right’, a doctor must be able to act single-mindedly in the interests of the child. He ought not to have at the back of his mind an awareness that if his doubts about intentional injury or sexual abuse prove unfounded he may be exposed to claims by a distressed parent.

87. This is not to say that the parents’ interests should be disregarded or that the parents should be kept in the dark. The decisions being made by the health professionals closely affect the parents as well as the child. Health professionals are of course fully aware of this. They are also mindful of the importance of involving the parents in the decision-making process as fully as is compatible with the child’s best interests. But it is quite a step from this to saying that the health professionals personally owe a suspected parent a duty sounding in damages.
Introduction and scope

1 Doctors play a vital role in protecting children and young people.

2 Good Medical Practice\(^1\) places a duty on all doctors to protect and promote the health and well-being of children and young people.\(^*\) This guidance is intended to help doctors by providing more detailed advice about how they can fulfil their duty to protect infants, children and young people who are living with their families or living away from home, including those looked after by a local authority and in planning for the well-being of children yet to be born.

3 You should read this guidance in conjunction with our advice in Good Medical Practice and 0–18 years: guidance for all doctors and our guidance on confidentiality and consent\(^2\), which provide further advice on assessing capacity, best interests, and decisions about treatment relating to the health of children and young people.

4 You must be prepared to explain and justify your actions. Doctors who make decisions based on the principles in this guidance will be able to do so. You should always make a contemporaneous record of your decisions and the reasons for them. Serious or persistent failure to follow this guidance will put your registration at risk.

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1 Good Medical Practice, paragraphs 24-28
www.gmc-uk.org/guidance/good_medical_practice/relationships_with_patients_young_people.asp

2 0–18 years: guidance for all doctors
www.gmc-uk.org/guidance/ethical_guidance/children_guidance_index.asp

Consent: Patients and doctors making decisions together
www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp

Confidentiality
www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp

* See Annex A for a description of who we mean by children and young people and for guidance on who has parental responsibility and roles of parents and carers.
Principles

5 All children and young people have a right to protection from abuse and neglect. All doctors have a role in protecting children and young people. The principles that follow should guide all doctors when they see signs that raise concerns about the safety or well-being of a child or young person.

a. All doctors, including doctors who treat adult patients, must consider the needs of children and young people, promote their well-being and good health and where possible, prevent abuse and neglect.

b. Doctors providing services to children and young people must focus on their needs, taking into account their maturity and understanding, their ethnicity, culture, gender, sexual orientation, religion or belief, disability, and whether they are pregnant or married.

c. All doctors must treat children and young people as individuals with rights, including the right to be heard, to participate in decisions that affect them, and to be given the information they want or need to know, in line with their maturity and understanding (see the advice on assessing capacity at Annex B).

d. Doctors must respect children, young people and their families’ right to receive confidential medical care and advice, but this must not prevent sharing information where this is necessary to protect children and young people from abuse and neglect (see the advice on disclosures in the public interest at Annex C).

e. Doctors making decisions about children and young people must do so in their best interests (see the advice on best interests at Annex D).

f. Doctors must act promptly and work collaboratively with other professionals involved in child protection, to protect and promote the best interests of children and young people.

g. The family is usually the best place for children and young people. Doctors should help families provide a safe place for them to grow and develop, but must intervene effectively when children and young people need protection.

h. Doctors must recognise the limits of their competence, and refer children and young people to, or seek advice from, an experienced colleague where appropriate.
Identifying children and young people at risk of abuse and neglect

Key points
- Be able to identify risk factors in a child’s environment; and signs of abuse and neglect, if you treat or care for children or young people.
- Consider the needs and safety of children and young people, even when you are treating adult patients.
- Take part in child protection training appropriate to your role.

Roles of all doctors

6 You must consider the needs and safety of children and young people, whether or not you routinely see them as patients. When you care for an adult patient, that patient must be your first concern, but you must also consider whether your patient poses a risk to children and young people, and be able to identify risk factors\(^3\) in a child’s environment that might be linked to abuse or neglect. This might include, for example:

   a. a parent with drug or alcohol misuse or mental health problems
   b. violence, or a history of violence, within the family
   c. family members subjected to abuse or neglect in the past
   d. abuse or neglect of animals by a parent
   e. vulnerable and unsupported parents
   f. a child with a disability.

7 If you believe or suspect that a child or young person may be at risk of abuse or neglect you should follow the guidance in paragraphs 32–37.

8 Early identification of risk factors is necessary to protect children and young people from abuse and neglect. Working in partnership with parents and families can help children and young people get the care and support they need to be healthy, safe and happy, and to achieve their potential. You should be able to recognise families that need additional support, provide such support where that is part of your role, or refer the family to other health or local authority children’s services so that they can receive appropriate help.

9 You must understand what to do if you have concerns that a child or young person is at risk of, or is subject to, abuse or neglect or that an adult may pose a risk to children and young people. This means that you should have a working knowledge of local procedures for protecting children and young people in your area, and have identified the named or designated doctor for child protection, or lead clinician, to whom you should go to for advice and know how to contact them.\(^4\)

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\(^3\) When to suspect child maltreatment (National Institute of Health and Clinical Excellence, 2009) http://guidance.nice.org.uk/CG89

\(^4\) In England, Northern Ireland and Wales designated and named doctors have specific roles and responsibilities for protecting children and young people. In Scotland, this role is fulfilled by the lead clinician.
Roles of doctors who work with children or young people

10 If you work with children or young people, you should have the knowledge and skills to identify signs of physical, emotional or sexual abuse, neglect, and fabricated or induced illness, and to take appropriate and prompt action where necessary. You must have the skills to listen, and respond appropriately, to children and young people who disclose information about abuse or neglect.

11 You must be open-minded when considering the possible cause of an injury or other signs that may indicate abuse or neglect of a child or young person. You should consider, for example as part of the differential diagnosis, whether there is evidence of an uncommon condition, including a genetic condition, which might give rise to the child’s injury or symptoms.

12 You must ensure that the clinical needs of children and young people are met, and are not overshadowed by child protection concerns. You should work in partnership with parents and families, where possible, to ensure that children and young people are getting the care and support they need and be aware of services available in your area that may be able to provide appropriate help, including, for example, services provided by voluntary or charitable groups. You must also be satisfied that the needs of children and young people who may be living in particularly stressful circumstances are being addressed.

13 It may be difficult in some cases to identify where parents’ freedom to bring up their children in accordance with their religious and cultural practices or beliefs becomes a cause for concern about a child’s physical or emotional well-being. In deciding whether to raise concerns with parents or with other agencies, you must make sure that you are considering the issues impartially, and not allowing your personal views about parents’ and other adults’ religious and cultural practices or beliefs to adversely affect decisions about them or their family. If, having discussed the issues with the parents, you believe that a child or young person is at risk of, or is suffering, abuse or neglect, whatever the cause, you must make a referral to local authority children’s services. If in doubt, you should seek advice from a professional or service that has experience working with a particular community, or from a named or designated doctor or lead clinician, or where these are not available, an experienced colleague. You should also take part in training on cultural diversity where possible.

14 If you are a designated or named doctor, or lead clinician, you should make sure your colleagues know what help you can offer and how to contact you for advice and support.

Key points

- Listen to children and young people and take their views into account in decision making.
- Provide information that children, young people, and their parents want or need to know, in a way they can understand.
- Tell children, young people, and their parents when you have concerns about abuse or neglect and explain how these concerns will be investigated.

15 You should make sure that arrangements are made to meet the language and communication needs of children, young people and parents. This might include, for example, using an independent advocate or interpreter. You must not rely on children or other family members to interpret for the parents where abuse or neglect is suspected.

16 The doctor-patient relationship may involve an imbalance of power between the doctor and their patients. You must recognise this and be aware of how children, young people and their parents might perceive the relationship.

Communicating with children and young people

17 Children and young people are individuals with rights that must be respected. You must listen to children and young people and talk directly to them, taking into account their age and maturity. You must answer questions honestly and make sure they know who they can go to for help or support.

18 You must take children and young people’s views seriously and not dismiss their concerns or fears, or discount their views because of their age. Even where children do not have the maturity to make decisions for themselves, their views and preferences are still important and valid, and must be taken into account in assessing their best interests. For further advice see paragraphs 14–21 of 0–18 years: guidance for all doctors.

19 In some cases the presence of a parent or other adult may deter a child or young person from being open about what has happened to them or any concerns or fears they might have. In these circumstances, you should speak to the child or young person without the parent present, in a suitable environment and with appropriate support available to them.

Communicating with parents

20 Good communication with parents is essential. In most cases, parents want what is best for their children, and are expert in identifying when their child’s behaviour is not normal and may be due to ill-health. Doctors should acknowledge parents’ understanding of their children, particularly where children’s age or disabilities make communication with them difficult.

21 You should explain that doctors have a professional duty to raise concerns if they think a child or young person is at risk of abuse or neglect, and make sure that parents are given information about the nature of concerns and how they will be investigated or acted upon, including if you are making a referral to local authority children’s services. This information should be provided when concerns are first identified and throughout a family’s involvement in child protection procedures. You must give parents opportunities to ask questions and keep them informed of progress, and be willing to answer their questions openly and honestly. You should provide information about where they may find additional support and independent advice.

22 Being open and honest with families when concerns are raised about a child’s safety, and avoiding judgemental comments or allocating blame, can foster cooperation and help children and young people stay with their families in safety.

23 Most people do not intentionally harm children in their care. However, a small number of parents do deliberately harm their children, and are dishonest in their account of events or lifestyle. You must listen carefully to parents, children and young people, explore inconsistent accounts and keep an open mind about the cause of a child’s injury or other sign that may indicate abuse or neglect. You must be prepared to justify your assessment and decision.
Confidentiality and information sharing

Key points

- Sharing information can help protect children and young people from abuse and neglect.
- Seek consent of children, young people or their parents before sharing information, where practicable; but do not allow delays to put children or young people at risk.
- Inform children, young people and their parents about the information you are disclosing where appropriate, whether or not they consent to the disclosure.
- Seek advice if you are not sure what to do.

24 All patients, whether they are children, young people or adults, are entitled to expect that information about them will be held in confidence by their doctors and the service that employs, or contracts with them. A confidential medical service encourages patients to be open and honest with their doctors. Confidentiality is a key element in building relationships of trust with all patients, but children and young people identify it as a particularly important issue.

25 Confidentiality is not an absolute duty. Where a child or young person is at risk of, or is subject to, abuse or neglect, the potential consequences of not sharing relevant information will, in the overwhelming majority of cases, outweigh the harm disclosure might cause. However, you should inform the family about information you are disclosing whether or not they have given their consent (see paragraph 30).

26 When you are uncertain about whether to disclose information, you should discuss your concerns and how best to manage any risk to a child or young person, with your named or designated doctor or lead clinician, or where these are not available, an experienced colleague. If, after seeking advice, you decide not to disclose information, you must be prepared to justify that decision. You must record your decision and your reasons for not disclosing information.

27 If you disclose information, you must document this in the child’s records. If you disclose information about members of the child’s family, you should document this in their records. You should include the scope of the information disclosed, to whom it was sent and why. You should also include whether consent was given, and by whom, or your reasons for disclosing confidential information without consent; any steps you have taken to seek consent or your reasons for not doing so; and details of advice you have sought.

Seeking consent to share information

28 You should help children, young people and their parents to understand the importance and benefits of sharing information. You should seek consent to share information unless it is not practicable to do so because delaying sharing relevant information with an appropriate person or authority would:

a. increase the risk to the child, young person, you or anyone else, or

b. undermine the purpose of the disclosure.

29 In seeking consent you should explain why you want to share information and how it will be used, the scope of information to be disclosed, and who it will be disclosed to.

30 In cases where it is not practicable to seek consent from the person before disclosing information, you must inform them as soon as possible after you have disclosed the information, unless this would put the child or young person, you or anyone else at risk of harm. You should give them information about where they can go to for support and independent advice.

31 The paragraphs that follow consider the circumstances in which disclosures should usually be made.

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6 See Disclosures in the public interest at Annex C
Information sharing – where you believe a child or young person is at risk of, or is subject to, abuse or neglect

32 You must inform your local authority children's services department, the police, or other appropriate agency promptly if you believe that a child or young person is at risk of, or is subject to, abuse or neglect.

33 If, exceptionally, after considering the possible causes and explanations given for signs that may indicate abuse or neglect, you think it is not in the child’s best interests to inform an appropriate agency, you should seek advice from your named or designated doctor or lead clinician, or where these are not available, an experienced colleague. If you then decide not to disclose information, you must be able to justify your decision. You must make sure that the child or young person and their family has access to appropriate care and support.

Information sharing – where you suspect abuse or neglect

34 If you suspect that a child or young person is or may be at risk of abuse or neglect, but you are not certain about the level of risk or the cause of any sign that may indicate abuse or neglect, you must still disclose information to an appropriate body, other than in exceptional circumstances (see paragraph 33). Your disclosure will be justified, provided that your concern is honestly held and reasonable, disclosures are made promptly, through appropriate channels and are limited to relevant information. In raising concerns you are not making the final decision about how best to protect the child or young person. This is the role of the local authority children’s services and ultimately the courts. Such disclosures will be justified, even if your concern turns out to be groundless. You can find information about how the GMC considers complaints at www.gmc-uk.org/childprotection.

35 You should pursue and escalate concerns if you believe that an initial referral to another agency has not been responded to appropriately and a child or young person is still at risk of abuse or neglect.

Minor concerns that might be part of a wider picture

36 Where you have concerns about a child or young person which are minor in themselves but that cause you to consider abuse or neglect, you should discuss your concerns with your named or designated doctor or lead clinician, or where these are not available, an experienced colleague, without disclosing the identity of the child or young person where possible.

37 If discussions with colleagues do not allay your concerns, you should consider sharing the reasons for your concerns, with the consent of the child or young person, or parent, if practicable, with other agencies in contact with the child or young person. Risks to a child or young person’s safety may become apparent only when a number of people with niggling concerns or seemingly minor worries share them.

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7 References to ‘suspect’ abuse or neglect in this guidance means a serious level of concern about the possibility of child abuse or neglect but not proof of it (When to suspect child maltreatment, 2009).

8 References to ‘consider’ abuse or neglect in this guidance means that abuse or neglect is one possible explanation for an injury or sign that may indicate abuse or neglect or is included in the differential diagnosis (When to suspect child maltreatment, 2009).
Responding to requests for information

38 You should consider all requests for information for child protection purposes seriously and promptly, bearing in mind that refusal or delay could increase the risk of harm, or undermine efforts to protect a child or young person. Before disclosing confidential information, you should:

a. check the person requesting information has a legitimate interest, for example, if a request is made by telephone, or by a person or agency you do not recognise

b. understand the reason for the disclosure and the scope of the information required, and how this information may be used in the future

c. be satisfied that you have the person’s consent, the disclosure is required by law, or it is justified in the public interest, for example if disclosure is necessary to protect a child or young person from abuse or neglect.

Reviews and inquiries where children or young people have died or suffered significant harm

39 You must cooperate with requests for information about child abuse and neglect, including for purposes of formal reviews set up to identify why a child has died or been seriously harmed, to learn lessons from mistakes and to improve systems and services for children and young people. You should disclose relevant information, about a child or young person, their parents or others; where practicable you should seek consent to do so.

40 Where confidential information is requested for reviews with wider purposes, for example a routine review of all child deaths, you should consider carefully whether this will meet the public interest test (see the advice on disclosures in the public interest at Annex C). Where you conclude that the disclosure would not be in the public interest, you must obtain consent before disclosing information from which the child or young person, their parents or others could be identified.

What information should be shared?

41 The information you share should be relevant to the purpose and could include information about the child or young person, or their parents, siblings or others. You should include any minor issues that you judge to be relevant but you should not usually disclose complete records.

9 For example, Serious Case Reviews in England and Wales; Significant Case Reviews in Scotland; Case Management Review in Northern Ireland; Inquests and Inquiries; and Inquiries into sudden or unexpected child deaths
Record keeping

Key points

- Keep clear, accurate and legible records.
- Make records at the same time as the events recorded, or as soon as possible afterwards.
- Make sure information that may be relevant to keeping a child or young person safe is accessible to other clinicians providing care to them (and their families).

42 You must keep clear, accurate and legible records, reporting your concerns, including minor concerns, clinical findings, decisions made, and information given to children, young people, their parents or other adults. You must record decisions about disclosure of information, including the reasons for your decisions; any steps you have taken to seek consent or your reasons for not doing so; and details of advice you have sought.

43 Medical records are made for the purpose of supporting safe and effective care, but they may be used for other purposes, including in making decisions about a child or young person’s safety. They may also be used as evidence in court. It is particularly important that records relating to possible abuse or neglect of a child or young person are full and accurate, distinguish between fact and hearsay or supposition, and are dated and timed. You should clearly record in the medical record any continuing uncertainty about the risk of abuse or neglect to a child or young person, as this information may be relevant if put together with other information about the child or young person or their family.

44 You must make records at the same time as the events you are recording or as soon as possible afterwards.

45 Where concerns about abuse or neglect of a child or young person are shown to be unfounded or unsubstantiated, you should record this clearly in the child’s medical record and in the parents’ records, if their records contain information about child protection concerns. You should explain to young people and their parents why information will continue to be recorded in their medical records about these events.

46 You should store information or records from other organisations, such as case conference minutes, with the child or young person’s medical record, or otherwise make sure that this information will be accessible to clinicians who may take over the care of the child or young person. Where a child or young person is referred to specialist services you should make sure that information provided includes relevant information about child protection concerns.

47 Where you provide care for several family members, you should include information about family relationships in records, or links between the records of a child or young person and their parents, siblings or others with whom they have close contact. Such notes or links may be appropriate if they raise clinicians’ awareness of family relationships that could be important in protecting a child or children from abuse or neglect.

48 You must comply with the requirements of the law in providing children, young people or their parents with access to their records. For further advice see paragraphs 53–55 of 0–18 years: guidance for all doctors.

49 You must make sure that records are stored and disposed of in accordance with authoritative guidance on records management, including the retention schedules published by the UK health departments, whether or not you work in the NHS.  

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10 The NHS Code of Practice: Records Management (Department of Health, 2006), Records Management: NHS Code of Practice (Scotland) (Scottish Government, 2008), Welsh Health Circular (2000) 71: For The Record (National Assembly for Wales), and Good Management, Good Records (Department of Health, Social Services and Public Safety, Northern Ireland, 2005) all include advice on storing and disposing of recordings made as part of a patient’s care.
Consent to examination or investigation where abuse or neglect is suspected

Key points

- Seek consent or other legal authority to examine a child or young person.
- Be satisfied that the person giving consent understands the purpose of the examination, what it will involve, and how the results of the examination might be used.
- Respect a competent young person’s decision to refuse an examination.
- Avoid repeat examinations of a child or young person that are not clinically indicated.

50 Before undertaking an examination or investigation, you must be satisfied that it is necessary and proportionate to the circumstances. You should be clear about what it is designed to achieve and whether the outcome is likely to affect the proposed course of action. You must avoid repeated examinations or investigations that are not clinically indicated as this may be harmful to the child or young person.

51 You must have consent or other authority before examining, investigating or treating a child or young person. Consent will be needed for any examination, including a psychiatric or psychological assessment.

52 You must be satisfied that the person giving consent understands the purpose of the examination and what it will involve; how the results of the examination might be used, for example as evidence in court, and that they have the right to refuse consent and the possible consequences of doing so. You must get specific consent to make a photograph or other image during an examination for forensic or diagnostic purposes, and separate consent to make the image for other purposes, such as education or training. Images made during an examination may become evidence in court.\(^{11}\)

53 Consent or authorisation can be given by:

a. a child or young person who has the maturity and understanding to make the decision

b. a person with parental responsibility (it is usually sufficient to have consent from one such person)

c. the courts, for example the Family Court or the High Court.

54 If a third party, for example the police or local authority children’s services, provides evidence of parental consent, you should be satisfied that the parent has understood the purpose of the examination and how the results might be used.

55 In conducting an examination or investigation you should not exceed the terms of consent or authorisation.

56 You should usually get consent in writing, but you can rely on oral consent from a parent, for example if a parent has given consent in a telephone conversation and waiting for written consent would delay examination or treatment of a child or young person. You must record the discussion in the child or young person’s medical record.

\(^{11}\) Guidance for best practice for the management of intimate images that may become evidence in court (FFLM & RCPCH)
http://fflm.ac.uk/upload/documents/1280751791.pdf
Advice on seeking consent to test children and young people for a serious communicable disease is set out in paragraphs 12–16 of our supplementary guidance Confidentiality: Disclosing information about serious communicable diseases.\(^\text{12}\)

### Withholding consent

#### 58  If a young person who has capacity to consent refuses a forensic examination, you should discuss with them their views and concerns about the examination or what might happen afterwards, but you should usually respect their decision. Young people who are given the information and support they need, and empowered to make decisions for themselves, may later change their mind. It is important that you respect children and young people’s decisions, even if this may affect the quality of forensic evidence available.

#### 59  If a child or young person refuses examination for therapeutic purposes or treatment that you consider is in their best interests, you should consider involving others in the team, and seek advice from a named or designated doctor, or lead clinician, or where these are not available, an experienced colleague. If treatment is immediately necessary to protect a child or young person’s health, you should seek legal advice about whether to apply for authority from the court to provide the treatment.

#### 60  If a parent refuses consent to examine or treat a child, and you believe that the child is at an immediate risk of harm (where for example the child will be taken away from the healthcare premises by a parent) you should contact the police and local authority children’s services, who may apply to the courts for emergency proceedings to protect the child. If you judge that the risk is not immediate, you should discuss your concerns with local authority children’s services, even if you are not certain about the level of risk or its cause (see paragraph 26).

We give advice about making covert recordings in paragraph 54 of our guidance Making and using visual and audio recordings of patients.\(^\text{13}\) It states:

Covert recordings should be undertaken only where there is no other way of obtaining information which is necessary to investigate or prosecute a serious crime, or to protect someone from serious harm. This might arise in cases where there are grounds to suspect that a child is being harmed by a parent or carer. Before any covert recording can be carried out, authorisation must be sought from a relevant body in accordance with the law.\(^\text{14}\) If you consider making covert recordings, you must discuss this with colleagues, your employing or contracting body, and relevant agencies, except where this would undermine the purpose of the recording, in which case you should seek independent advice. You must follow national or local guidance.\(^\text{15}\) In most circumstances, covert recordings should be carried out by the police.

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\(^{12}\) Confidentiality: Disclosing information about serious communicable diseases  

HIV testing guidelines for children of confirmed or suspected HIV positive parents  

\(^{13}\) Making and using visual and audio recordings of patients  
[www.gmc-uk.org/recordings](www.gmc-uk.org/recordings)


See [www.scotland.gov.uk/Publications/2003/03/16695/19537](www.scotland.gov.uk/Publications/2003/03/16695/19537)  

Safeguarding Children in whom Illness is Fabricated or Induced (Welsh Assembly Government, 2008). See [http://wales.gov.uk/dhss/publications/children/guidance/safeguardingillness/illnesses.pdf](http://wales.gov.uk/dhss/publications/children/guidance/safeguardingillness/illnesses.pdf); sessionid=7C6WKLxGw6bSFZ3qw05P618pv1pQ2dTLbX8rgBqwG1t3JnGVC090v514291769?lang=en
Key points

- Understand the roles of other professionals and agencies with a child protection responsibilities.
- Take part in child protection procedures, which may include providing reports and attending or contributing to meetings.
- Know who your named or designated doctor for child protection or lead clinician is and how to contact them.

Cooperate and communicate effectively

62 You must cooperate and communicate effectively with colleagues within your team and organisation and with other professionals and agencies, such as services for children and young people and the police.

63 You should understand and respect the child protection roles, responsibilities, policies and practices of other agencies and professionals. You must be clear about your own role and responsibilities in protecting children and young people, and be ready to communicate this to colleagues and other professionals.

64 You should make sure you have effective methods of communicating with health visitors, child protection leads and other statutory agencies, either on a regular basis or as the need arises. You must know whom to contact and how to contact them.

Participation in meetings

65 You should participate in child protection procedures. This may include attending child protection conferences, strategy meetings and case reviews to provide information and give your opinion. You may be able to make a contribution, even if you have no specific concerns: GPs for example are sometimes able to share insights into risks and strengths within a child or young person’s family.

66 Where meetings are called at short notice or scheduled at inconvenient times, you should still try to attend. Where this is not practicable you should try to find others ways of contributing, for example you could participate by telephone or submit a written report for consideration at the meeting.
Training and development

Key points

- Know what to do if you have concerns about abuse or neglect of a child or young person.
- Maintain your knowledge and skills to protect children and young people.

67 You must maintain and further develop the knowledge and skills to protect children and young people appropriate to your role, as currently set out in Safeguarding Children and Young People: roles and competences for health care staff (AMRC, 2010). You should do this by taking part in regular education and training opportunities.

68 You should reflect regularly on your own performance in protecting children and young people, and your contributions to any teams in which you work. You should seek and be prepared to act on feedback you receive through audit, case discussion, peer review and supervision. You should contact your named or designated doctor for advice about opportunities to discuss and learn from child protection cases in your local area.

69 You should learn from other colleagues and professionals where opportunities are available, for example by participating in training for multi-disciplinary teams or by sharing best practice and skills.
Doctors giving evidence in court

Key points
- The first duty of all witnesses is to the court.
- Give evidence that is impartial, honest and is not misleading.
- Work within the limits of professional competence.
- Fulfil responsibilities as a witness in a timely manner.

70 The role of an expert witness is to assist the court on specialist or technical matters within their expertise. Witnesses of fact (also known as a professional witness) provide professional evidence of their clinical findings, observations, and actions and the reasons for them.

Duties of all witnesses

71 Whether you are acting as an expert witness or a witness of fact you have a duty to the court and this overrides any obligation to the person who is instructing or paying you. This means that you have a duty to act independently and not be influenced by the party who retains you.

72 You must have an understanding of the witness’s role throughout the different stages of the court process from instructions to judicial decision. You must engage with case management constructively, making sure that you meet the time scales for producing reports, and attending conferences, meetings or court.

73 When giving evidence or writing reports, you must restrict your statements to areas in which you have relevant knowledge or direct experience.

74 You must make sure that any report that you write, or evidence that you give, is accurate and is not misleading. This means that you must take reasonable steps to verify any information you provide, and you must not deliberately leave out relevant information.

75 Your advice and evidence may be relied upon for decision making purposes by people who do not come from a medical background. Wherever it is possible to do so without misleading, you should use language and terminology that will be understood by people who are not medically qualified. You should explain any abbreviations and medical or other technical terminology that you use. Diagrams are useful if fully annotated.

76 You must be honest, trustworthy, objective and impartial. You must not allow your views about an individual to prejudice the evidence or advice that you give.

Giving evidence as a witness of fact (professional witness)

77 Your written and oral evidence must be clear, concise and based on contemporaneous clinical records and notes. You may include some opinion about the findings, for example how an injury to a child has been caused, but you should make clear what is factual evidence, and what is opinion based on your professional judgment and experience. You should not comment on reports made by experts.

Giving expert evidence

78 You must make sure that you understand exactly what questions you are being asked to answer. If your instructions are unclear, inadequate or conflicting, you should seek clarification from those instructing you. If you cannot obtain sufficiently clear instructions, you should not provide expert advice or opinion.

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16 Civil Procedure Rules (Rule 35.3), Criminal Justice Procedure Rules (Rule 33.2), Family Procedure Rules (Rule 25.3)
17 This includes your views about an individual’s age, colour, culture, disability, ethnic or national origin, gender, lifestyle, marital or parental status, race, religion or beliefs, sex, sexual orientation or social or economic status.
79 You should be aware of the standards and nature of practice at the time of the incident under investigation in the proceedings.

80 You must only deal with matters, and express opinions, that fall within the limits of your professional competence. If a particular question or issue falls outside your area of expertise, you should make this clear. In the event that you are required by the court to answer a question, regardless of your expertise, you should answer to the best of your ability but make clear that you consider the matter to be outside your competence.

81 You must give a balanced, unbiased opinion, and be able to state the facts or assumptions on which it is based. If there is a range of opinion on the question upon which you have been asked to comment, you should summarise the range of opinion and explain how you arrived at your own view. If you do not have enough information on which to reach a conclusion on a particular point, or your opinion is otherwise qualified, you must make this clear.

82 Where you are asked to give advice or opinion about an individual without the opportunity to consult with or examine them, you should explain any limitations that this may place on your advice or opinion, and be able to justify the decision to proceed on such a basis.

83 If, at any stage, you change your view on any material matter, you have a duty to make sure that those instructing you, the opposing party and the judge are made aware of this without delay. Usually you need only inform your instructing solicitor who will communicate with the other parties. If the solicitor fails to disclose your change of view, you should inform the court. If you are unsure about what to do, you should ask the court or seek legal advice.

84 You must respect the skills and contributions of other professionals giving expert evidence, and not allow their conduct or behaviour to affect the impartiality of your professional opinion.

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18 The same principle applies where doctors act in other roles, for example as an advisor in a case.

19 See Oldham MBC v GW & Ors [2007] EWHC 136 (Fam)
Notes and records
85 You must make sure that contemporaneous, full and accurate notes of meetings or interviews with the parties and the child or young person involved in the case are made. You should consider making audio recordings of interviews or assessments, where this may assist in resolving any dispute about events that may arise later. You should make sure that any notes or reports you make are written objectively and fairly.

Keeping up to date
86 You must keep up to date in your specialist area of practice. You must also make sure that you understand, and adhere to, the law and codes of practice that affect your role as an expert witness. In particular, you should make sure that you understand:
   a. how to construct a report that complies with practice directions, and
   b. how to give oral evidence.

87 If you have expertise and experience in acting as an expert witness, you should consider sharing your knowledge with colleagues that might be called to give evidence in court in the future, to help build their confidence and willingness to act in this capacity.

Information security and disclosure
88 You must take all reasonable steps to access all relevant papers and maintain their integrity and security whilst in your possession.

89 If you have reason to believe that consent for disclosure of information has not been obtained (from the young person, parent or client, or from any third party to whom their medical records refer) you should return the information to the person instructing you and seek clarification.

90 You should not disclose confidential information other than to the parties to proceedings, unless:
   a. the person to whom the information relates consents (and there are no other restrictions or prohibitions on disclosure)
   b. you are obliged to do so by law
   c. you are ordered to do so by a court or tribunal
   d. your overriding duty to the court and the administration of justice demands that you disclose information.

Conflicts of interest
91 If there is any matter that gives rise to a potential conflict of interest, such as any prior involvement with one of the parties, or a personal interest, you must follow the guidance on disclosure in paragraph 83. You may continue to act as an expert witness only if the court decides that the conflict is not material to the case.
Other sources of information and guidance

Child Protection companion
(Royal College Paediatrics Child Health, 2006)

Child protection reader: recognition and response in child protection
(Royal College Paediatrics Child Health, 2007)

Expert Witness Guidance
(British Medical Association, 2008)

Guidance for best practice for the management of intimate images that may become in court
(Faculty of Forensic and Legal Medicine and Royal College Paediatrics Child Health, 2010)

Intercollegiate report – Safeguarding children and young people: roles and competences for healthcare staff
(Royal Colleges, revised 2010)

National guidance for child protection in Scotland
(Scottish Government, 2010)

Regional child protection policy and procedures
(Area Child Protection Committees, 2005)

The Munro Review of Child Protection: Final Report – A child-centred system
(Department for Education, 2011)

The physical signs of child sexual abuse: An evidence-based review and guidance for best practice
(Royal College of Physicians of London and Faculty of Forensic and Legal Medicine, 2008)

When to suspect child maltreatment
(National Institute for Health and Clinical Excellence, reissued December, 2009)

Working together to safeguard children – A guide to inter-agency working to safeguard and promote the welfare of children
(Department for Children, Families and Schools, 2010)
Rules and legislation

England and Wales
The Criminal Justice Act 2003

The Civil Evidence Act 1995

The Civil Procedure Rules

The Criminal Procedure Rule

The Family Procedure Rules
www.justice.gov.uk/procedure.htm

Practice Direction on Experts in Family Proceedings Relating to Children
www.hmcourts-service.gov.uk/cms/pds.htm

Scotland
The Criminal Procedure Rules and Court Rules

Northern Ireland
The Rules of the Supreme Court
Not available online. Contact the Office of Public Sector Information (www.opsi.gov.uk) for details of how to obtain a copy.

Criminal Justice (Evidence)(Northern Ireland) Order 2004

Useful organisations for doctors giving evidence in court

The Academy of Medical Royal Colleges
www.aomrc.org.uk

The Civil Justice Council
www.civiljusticecouncil.gov.uk

Family Justice Council
www.family-justice-council.org.uk

The Crown Prosecution Service (Disclosure manual)
www.cps.gov.uk/legal/d_to_g/disclosure_manual

The Law Society of England & Wales
www.lawsociety.org.uk

The Law Society of Scotland
(Code of Practice: Expert witnesses engaged by solicitors)
www.expertwitnessscotland.info/codepract.htm
Who are children and young people?

Children and young people are a diverse group with many different needs.

This guidance is concerned with children and young people from birth until their 18th birthday.

References to ‘children’ usually mean younger children who lack the maturity and understanding to make important decisions for themselves.

Older or more experienced children who can make these decisions are referred to as ‘young people’.

At 16 it is legally presumed that young people have the ability to make decisions about their own care.

Parents and parental responsibility

References to ‘parents’ in this guidance also means people that care for or look after children or young people, this might include other family members or adults that live in the same house hold.

A person with parental responsibility means someone with the rights and responsibilities that parents have in law for their child, including the right to consent to medical treatment for them, up to the age of 18 in England, Wales and Northern Ireland and 16 in Scotland.

Mothers and married fathers have parental responsibility. So do unmarried fathers of children registered since 15 April 2002 in Northern Ireland, since 1 December 2003 in England and Wales and since 4 May 2006 in Scotland, as long as the father is named on the child’s birth certificate.

Unmarried fathers whose children’s births were registered before these dates, or afterwards if they are not named on the child’s birth certificate, do not automatically have parental responsibility. They can acquire parental responsibility by way of a Parental Responsibility Agreement with the child’s mother or by getting a Parental Responsibility Order from the courts. Married step-parents and registered civil partners can acquire parental responsibility in the same ways.
Parents do not lose parental responsibility if they divorce. If a child is taken into local authority care on a care order parents share parental responsibility with the local authority. If the child is in voluntary care, the local authority has no parental responsibility. Parents lose parental responsibility if a child is adopted. Parental responsibility can be restricted by court order.

Adoptive parents have parental responsibility, as do those appointed as a child’s testamentary guardian, special guardian or those given a residence order. Local authorities have parental responsibility while a child is subject to a care order.

You may need to get legal advice when in doubt about who has parental responsibility.

The only parental responsibility that continues until 18 in Scotland is the provision of guidance to the child (see s.1(1)(b)(ii) and s.1(2)(b) Children (Scotland) Act 1995). The Act refers to parental rights and responsibilities (PRR); reference to parental responsibilities in this guidance means PRR in Scotland.

People without parental responsibility, but who have care of a child, may do what is reasonable in all the circumstances of the case to safeguard or promote the child’s welfare. This may include step-parents, grandparents and childminders. You can rely on their consent if they are authorised by the parents. But you should make sure that their decisions are in line with those of the parents, particularly in relation to contentious or important decisions.
Annex B – Assessing capacity

1 You must decide whether a young person is able to understand the nature, purpose and possible consequences of investigations or treatments you propose, as well as the consequences of not having treatment. Only if they are able to understand, retain, use and weigh this information, and communicate their decision to others can they consent to that investigation or treatment. That means you must make sure that all relevant information has been provided and thoroughly discussed before deciding whether or not a child or young person has the capacity to consent.

2 The capacity to consent depends more on young people’s ability to understand and weigh up options than on age. When assessing a young person’s capacity to consent, you should bear in mind that:

   a. at 16 a young person can be presumed to have the capacity to consent

   b. a young person under 16 may have the capacity to consent, depending on their maturity and ability to understand what is involved.

3 It is important that you assess maturity and understanding on an individual basis and with regard to the complexity and importance of the decision to be made. You should remember that a young person who has the capacity to consent to straightforward, relatively risk-free treatment may not necessarily have the capacity to consent to complex treatment involving high risks or serious consequences.* The capacity to consent can also be affected by their physical and emotional development and by changes in their health and treatment.

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* See paragraphs 70–71 of 0–18 years: guidance for all doctors for guidance on advice and treatment for contraception, abortion and sexually transmitted infections.

20 Family Law Reform Act 1969; Age of Majority Act 1969 (Northern Ireland); Age of Legal Capacity (Scotland) Act 1991; Adults with Incapacity (Scotland) Act 2000; Mental Capacity Act 2005; Gillick v West Norfolk and Wisbech AHA [1986] AC 112.
Annex C – Confidentiality and information sharing

Principles of confidentiality

1 Confidentiality is central to trust between doctors and patients and an essential part of good care. Without assurances about confidentiality, children, young people, their parents and other adults may be reluctant to seek medical attention or to give doctors the information they need in order to provide good care or to play their role in child protection.

2 Teenagers may have particular concerns and wish to keep confidential information from their parents, schools, children’s services, the police and other statutory agencies. Young people, parents and other adults receiving psychiatric care, and other vulnerable people might have similarly heightened concerns about the disclosure of confidential information.

3 But appropriate information sharing is essential to the efficient provision of safe, effective care, both for the individual and for the wider community. It is also at the heart of effective child protection.

4 The legal and ethical duty of confidentiality is not absolute. You can disclose confidential information about a person if:
   a. it is required by law
   b. they consent
   c. it is justified in the public interest, for example if disclosure is necessary to protect a child or young person from abuse or neglect.

Disclosures required by law

5 You must disclose information if ordered to do so by a judge or presiding officer of a court, or if it is otherwise required by law. If you are unsure about the relevance of information or records, or whether to include information in a report for a court, you should seek clarification from your instructing solicitors or the court.

6 You must not disclose confidential information to anyone else without the consent of the person, unless it can be justified in the public interest.
**Sharing information with consent**

7. You should be honest and open with the person about how their information will be used, for what purposes, and who will have access to it. You should make sure that information is readily available to them explaining that, unless they object, relevant confidential information will be shared within the healthcare team and with others supporting the provision of care.

8. You should usually seek express consent to share confidential information with others or for other purposes, including child protection, unless that would undermine the purpose or put a child or young people or others at increased risk of harm.

**Disclosing information in the public interest**

9. You can disclose confidential information without consent if the benefits to a child or young person of the disclosure outweigh both the public and the individual’s interest in keeping the information confidential. You must weigh the harms that are likely to arise from non-disclosure of the information against the possible harm, both to the person and the overall trust between doctors and patients of all ages, arising from the disclosure.

10. You should still seek consent, or tell the person that a disclosure will be made in the public interest, unless that is not practicable or would put you, the person or somebody else at risk of serious harm or would prejudice the purpose of the disclosure.

11. You must document in the person’s record your reasons for disclosing confidential information without consent, any steps you have taken to seek consent or your reasons for not doing so; and details of advice you have sought.
Doctors should always act in the best interests of children and young people. This should be the guiding principle in all decisions that may affect them. An assessment of best interests will include what is clinically indicated in a particular case. You should also consider:

1. the views of the child or young person, so far as they can express them, including any previously expressed preferences
2. the views of parents
3. the views of others close to the child or young person
4. the cultural, religious or other beliefs and values of the child or parents
5. the views of other healthcare professionals involved in providing care to the child or young person, and of any other professionals who have an interest in their well-being
6. which choice, if there is more than one, will least restrict the child or young person’s future options.

This list is not exhaustive. The weight you attach to each point will depend on the circumstances, and you should consider any other relevant information. You should not make unjustified assumptions about a child or young person’s best interests based on irrelevant or discriminatory factors, such as their behaviour, appearance or disability.