CARD 9

When can information be shared about adults at risk?
Duty of confidentiality
Health professionals owe the same duty of confidentiality to all their patients regardless of age, vulnerability or the presence of disability. A mental disorder, serious physical illness or learning disability should not lead to an assumption that the individual lacks capacity to make decisions relating to the disclosure of confidential information. Competent adults have considerable rights about the extent to which their information is used and shared, and these are protected both by law and by professional and ethical standards. Although there is a presumption that information will be shared between health professionals involved in providing care to a patient, where a competent adult explicitly states that this information should not be shared, this should ordinarily be respected.

Sharing information
The multi-agency approach to safeguarding adults nevertheless means that, where it is lawful and ethical to do so, appropriate information should be exchanged between relevant agencies to ensure the right support can be provided. Health professionals can sometimes feel challenged when a competent adult refuses to agree to the sharing of information that would seem to be in their best interests, or that could help mitigate a potential threat. Where a health professional believes that information should be exchanged, they should carefully explain the reasons for this, the likely benefits, and the duty of confidentiality that the various agencies are subject to. The reasons for the refusal should also be sensitively explored and, where appropriate, options that might prove more amenable to the patient offered.
Ultimately, however, where a competent patient refuses to permit disclosure, this should be respected. The only exceptions are where confidentiality can be overridden either by a court order or other legal authority, or in the public interest. Public interest justifications usually relate to disclosures to prevent significant harm to third parties or to prevent or prosecute a serious crime.

**Adults lacking capacity**
Where an adult lacks capacity, information can be disclosed in accordance with the MCA where, in the opinion of the relevant health professional, it would be in the incapacitated person’s best interests. Where an adult lacks capacity to consent to disclosure it is usually reasonable to assume that they would want people close to them, or directly involved in their care, to be given appropriate information about their illness, prognosis and treatment, unless there is evidence to the contrary.

**Key points**
- Health professionals owe the same duty of confidentiality to all their patients.
- Competent adults have the right to determine how their information is used, although this right is not absolute: confidentiality may be overridden by legal authority or where there is a significant risk of harm to others, or to prevent or prosecute a serious crime.
- Where an adult lacks capacity, relevant information can be disclosed where it is in their best interests.
- The principle of proportionality entails making balanced decisions about whether to share information without consent.
Good practice example – disclosure of information in an individual’s best interests

Mr Atjit is an elderly man living in residential care. His son is concerned about the care home’s ability to meet Mr Atjit’s needs as he is becoming increasingly confused. The son contacted Mr Atjit’s GP requesting sight of his father’s medical records. After a routine visit to Mr Atjit at the care home, the GP felt that Mr Atjit was unable to consent to disclosure because of his deteriorating mental ability. Given that the son was so concerned about the support being offered to his father, in the GP’s view it was clearly in the father’s best interests for the son to have access to relevant information about the support he was receiving. The GP decided, however, that it would not be appropriate to disclose the entire medical record as some of it contained sensitive information not relevant to the current episode of care. The GP therefore gave the son access to current and relevant information but not the entire record.