1. Competent children
There is no presumption of capacity for people under 16 in England, Wales and Northern Ireland and those under that age must demonstrate they have sufficient understanding of what is proposed. However, children who are aged 12 or over are generally expected to have to have capacity to give or withhold their consent to the release of information. In Scotland, anyone aged 12 or over is legally presumed to have such capacity. Younger children may also have sufficient capacity. When assessing a child’s capacity it is important to explain the issues in a way that is suitable for their age. If the child is competent to understand what is involved in the proposed treatment, the health professional 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. However, every reasonable effort must be made to persuade the child to involve parents or guardians particularly for important or life-changing decisions.

2. Children who lack capacity
The duty of confidentiality owed to a child who lacks capacity 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 capacity to give consent. An explicit request by a child that information should
not be disclosed to parents or guardians, or indeed to any third party, must be respected save in the most exceptional circumstances, for example, where it puts the child at risk of significant harm, 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, unless there are very convincing reasons to the contrary. 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 also be documented in the child’s record.

3. Parental responsibility
Anyone with parental responsibility can give or withhold consent to the release of information where the child lacks capacity. Not all parents have parental responsibility. In relation to children born after 1 December 2003 (England and Wales), 15 April 2002 (Northern Ireland) and 4 May 2006 (Scotland), both of a child’s 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. Parents who do not have parental responsibility nonetheless play an essential role in determining best interests and may have a right, under the Human Rights Act, to participate in the decision-making process.

Where the child has been formally adopted, the adoptive parents are the child’s legal parents and automatically acquire parental responsibility. Where the child has been born as a result of assisted reproduction, there are rules under the Human Fertilisation and Embryology Act 1990 that determine the child’s legal parentage. 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. In some circumstances parental responsibility can be delegated to other carers such as grandparents and childminders. If there is doubt about whether the person giving or withholding consent has parental responsibility, legal advice should be sought.

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.
4. Safeguarding children

Where health professionals have concerns about a child 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. The best interests of the child or children involved must guide decision-making at all times.

Knowing what to do when patients do not want confidential information disclosed, despite this being the best way to ensure that they do not suffer harm or abuse, is very difficult for health professionals. Health professionals should not make promises to the child about confidentiality that they may not be able to keep but, as in the case of any patient, trust is best maintained if disclosure is not made without prior discussion between the health professional and the child, unless to do so would expose the child or others to an increased risk of serious harm.

Where there is any doubt as to whether disclosure is in the child’s best interests, it is recommended that the health professional discusses the matter anonymously with an experienced colleague, the Caldicott guardian, their professional body or defence body. Health professionals must ensure that their concerns, and the actions they have taken, or intend to take, including any discussion with the child, colleagues or professionals in other agencies, are clearly recorded in the child’s medical record. Health professionals may be involved in case reviews for which the child’s records may need to be disclosed, but care should be taken not to disclose the notes of other family members without consent unless it can be justified in the public interest.
Confidentiality and disclosure of health information tool kit

**Children and young people**

(See also Card 6 on Assessment of Capacity and Determining ‘Best Interests’ and Card 10 on Public Interest and Card 1: ‘0-18’, ‘Children’, ‘Capacity’ and ‘MET’.)