



MDU

Children whose parents are separated

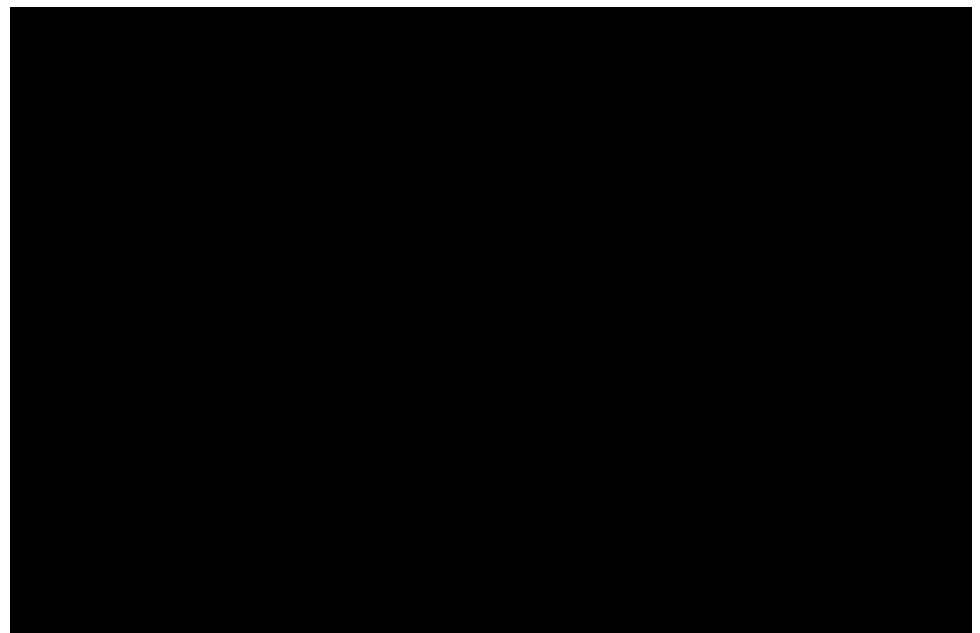
If parents who have separated ask for medical information about their child, it's important to know how to handle the request sensitively and correctly.

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It's common for GP practices to receive requests from estranged parents, asking for the disclosure of medical records or other confidential information about their child.

These requests must be handled sensitively and correctly. Either parent might take issue with a disclosure - or a refusal to disclose - and make a complaint as a result.

It's important for doctors to be sure of the law and their rights and responsibilities when responding to these requests. Here are the factors you need to take into account.



Parental responsibility

Anyone with parental responsibility for a child has a right to seek access to that child's medical records. Parental responsibility is defined in the Children Act 1989 as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to [the child and his \[sic\] property](#)'.

There is more information on the government's website about [who has parental responsibility](#).

Birth mothers automatically have parental responsibility, as do married fathers. However, in both cases, this can be removed by the court.

When the father is not married to the child's mother, he has parental responsibility if he is named on the birth certificate.

This has not always been the case and has only applied since law changes that took place:

- 1 December 2003 in England and Wales
- 4 May 2006 in Scotland
- 15 April 2002 in Northern Ireland.

Step-parents and civil partners can acquire parental responsibility by making a Parental Responsibility Agreement (or by a Parental Responsibility Order from the court).

Same-sex parents both have Parental Responsibility if they were civil partners at the time of treatment (eg donor insemination or fertility treatment). Or they can acquire parental responsibility via a Parental Responsibility Agreement or by jointly registering the birth, or by application to the court.

Parents do not lose parental responsibility if they divorce. However, it can be restricted by the court. If a child is adopted, the birth parents will lose parental responsibility for their child.

Representatives of the local authority have parental responsibility for a child who is in care.

A child's testamentary guardian, special guardian or other person given a residence order also has parental responsibility.

See also our [quick guide to parental responsibility](#).

The child's capacity to consent

Although someone with parental responsibility can seek access to a child's medical records, the child may have the capacity to decide for themselves if they want the information to be disclosed. The GMC's guidance [0-18 years](#) explains doctors should take into account the views of a child who has capacity to be involved in such decisions.

Usually, the parents will have the child's best interests at heart and the doctor should then encourage the child to involve the parents in their care and allow access to the records.

A child or young person with capacity has the legal right to access their own health records, and to allow or refuse* access by others, including their parents.

*** You might receive a request to override a competent child's refusal to share the content of their clinical records in the public interest. If this happens, you're advised to contact the MDU.**

In assessing whether a young person has capacity, a doctor must make sure the child understands the nature, purpose and possible consequences of agreeing to, or refusing, disclosure.

To have capacity to make a specific decision, the young person must be able to:

- understand, retain, use and weigh the information they are given
- communicate their decision.

Capacity does not entirely depend on the child's age. It rests more on their ability to understand and weigh up options.

In England and Wales, a young person of 16 and over can be presumed to have capacity to consent. Below this age, they may have capacity, depending on their maturity.

In Scotland, a child over 12 years old is presumed to have capacity to consent, although they could achieve capacity earlier or later than this.

The child's best interests

GMC guidance states that a doctor may allow someone with parental responsibility to access a child's medical records if the child or young person consents, or if they lack capacity and it doesn't go against the child's best interests.

However, [the guidance also says](#): "If the records contain information given by the child or young person in confidence you should not normally disclose the information without their consent."

It may also be justifiable to disclose confidential information about the child to a third party who does not hold parental responsibility, providing this is clearly in the child's best interests.

Should you tell the other parent?

When one parent asks the practice to disclose information about the child, there is no obligation to seek consent from the other parent, or to tell the other parent that you have received the request.

However, it may be wise to make sure the other parent is aware of the request, so that you can take into account any objection they may make and the reasons for it.

Proof of parental responsibility

If you feel there is any doubt that the person making the request has parental responsibility for the child, you can ask to see a copy of the child's birth certificate and/or the parents' marriage certificate, or a letter from the person's solicitor confirming their parental responsibility status.

Remember that it's possible for parental responsibility to have been removed after the date of these documents.

Third party information

Third party information may appear in the child's records. Before disclosure, you should consider seeking consent from the third party. If you can't get consent, the information may need to be anonymised or appropriately redacted.

Data protection law allows data controllers limited discretion to disclose third party information.

Generally, if you can't comply with a request to see the records without disclosing information relating to another individual who can be identified from that information, then you may comply with the request if:

- the third party has consented to the disclosure; or
- it is reasonable in all the circumstances to comply with the request without the consent of the third party.

Questions and answers

I don't know the estranged father. Do I need proof of identity?

You have a responsibility to satisfy yourself that the person requesting access has the right to do so, on the basis of having parental responsibility. This may require you to ask to see proof of identity, and/or evidence of parental responsibility.

The father is also a patient at the practice. The mother says he doesn't have parental responsibility, although he insists he does. Can we ask the mother to provide proof that the court has withdrawn his parental responsibility?

Your priority is to act in the best interests of the child at all times. Where you have reason to doubt that an individual currently has parental responsibility, you're advised to seek evidence. If the mother says it has been removed by the court, you can ask her to show you evidence of this.

The father wants us to let him know every time the child attends the surgery. Do we have to comply with his request?

A father with parental responsibility has a right to request access to the records, but the practice doesn't have to inform him each time the child attends, and should encourage the parents to communicate with each other, in the interests of their child.

However, you could consider a compromise (in the best interests of the child) by asking the father to request an update at intervals. This would be particularly appropriate if the child spends time in the care of the father, and has ongoing health issues.

The father has just been released from prison. The mother thinks he may use disclosure of their young child's records to find out where she lives. She feels vulnerable to physical attack. If he contacts the surgery, what can we say?

Although a father with parental responsibility has a right to request disclosure of his child's records, information should be withheld if disclosure would be contrary to the best interests of the child or if disclosure could lead to serious harm or be unreasonable to a third party. It would be entirely reasonable to remove the registered address from any copy records disclosed in this situation.

Practice checklist

- Does the person requesting information have parental responsibility for the child? If in doubt, ask to see a copy of the child's birth certificate and/or parents' marriage certificate, or a solicitor's letter.
- Do you have the child's consent? Applies to young people with capacity only.
- Would it be contrary to the child's best interests to disclose? Applies to young people lacking capacity.
- Have you considered informing the estranged partner?
- Is there third party information in the records? If so, you should consider obtaining consent from the third party.
- If no consent can be obtained from the third party, can the information be anonymised or appropriately redacted?
- The child's GP should be involved in the decision about whether or not to disclose.
- All decisions should be recorded in the medical notes.

This information is intended as a guide. For the latest medico-legal advice relating to your own individual circumstances, please contact our medico-legal team on 0800 716 646 or email advisory@themdu.com