

# Privacy Notice - Safeguarding

Some members of society are recognised as needing protection, for example children and adults with care and support needs (adult hereafter). Safeguarding is the action that is taken to promote the welfare and protect children/ adult from harm. If a child/ adult is suffering or likely to suffer significant harm, professionals have a statutory responsibility to protect them. This statutory responsibility is enshrined within the Care Act 2014, Children Acts 1989 & 2004 & Social Care Act 2014.

Where there is a suspected or actual safeguarding issue professionals should aim to gain consent to share information, but should be mindful of situations where to do so would place a child/ adult at increased risk of harm. Information may be shared without consent if a professional has reason to believe that there is good reason to do so, and that the sharing of information will enhance safeguarding. When decisions are made to share or withhold information, practitioners should record who has been given the information and why.

This is covered in the following legislation guidance:

The Mental Capacity Act 2005 <http://www.legislation.gov.uk/ukpga/2005/9/contents>

Section 47 of The Children Act 1989 :

(<https://www.legislation.gov.uk/ukpga/1989/41/section/47>),

Section 18 Schedule 1 Part 2 of Data Protection Bill 2018

(<https://www.legislation.gov.uk/>)

and

Section 45 of the Care Act 2014 <http://www.legislation.gov.uk/ukpga/2014/23/section/45/enacted>.

For children where who are identified as Child In Need professionals are required to seek consent in regards to sharing information. The relevant guidance is covered;

Section 17 Children Act 1989 <https://www.legislation.gov.uk/ukpga/1989/41/section/17>

<b>1) Controller</b> contact details	NHS NCL Integrated Care Board (ICB)  2nd Floor  Laycock PDC  Laycock Street  London  Greater London  N1 1TH
<b>2) Data Protection Officer</b> contact details	Tony Haworth Data Protection Officer <a href="mailto:Nclicb.dpo@nhs.net">Nclicb.dpo@nhs.net</a>
<b>3) Purpose</b> of the processing	The purpose of the processing is to protect the child or vulnerable adult.
<b>4) Lawfulness Conditions and Special Categories</b>	The sharing is a legal requirement to protect vulnerable children or adults, therefore for the purposes of safeguarding children and vulnerable adults, the following UK GDPR Article 6 conditions apply:  For consented processing; 6(1)(a) <i>“the data subject has given consent to the processing of his or her personal data for one or more specific purposes”</i>

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	<p>For unconsented processing;  <i>Article 6(1)(e) “for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”;</i></p> <p>And the following Article 9 condition for processing special category personal data:</p> <p><i>Article 9(2)(b) “...is necessary for the purposes of carrying out the obligations and exercising the specific rights of the controller or of the data subject in the field of ...social protection law in so far as it is authorised by Union or Member State law..”</i></p> <p>We will consider your rights established under UK case law collectively known as the “Common Law Duty of Confidentiality”*</p>
<b>5) Recipient or categories of recipients of the shared data</b>	The data will be shared with the ICB Quality and Nursing Directorate Safeguarding teams.
<b>6) Rights to object</b>	<p>This sharing is a legal and professional requirement and therefore there is no right to object.</p> <p>There is also GMC guidance for adult and child safeguarding:  <a href="https://www.gmc-uk.org/guidance/ethical_guidance/children_guidance_56_63_child_protection.asp">https://www.gmc-uk.org/guidance/ethical_guidance/children_guidance_56_63_child_protection.asp</a>  <a href="https://www.gmc-uk.org/ethical-guidance/ethical-hub/adult-safeguarding">https://www.gmc-uk.org/ethical-guidance/ethical-hub/adult-safeguarding</a></p>
<b>7) Right to access and correct</b>	The Data Subjects or their legal representatives have the right to access the data that is being processed or shared and have any inaccuracies corrected. There is no right to have accurate medical records deleted except when ordered by a court of Law.
<b>8) Retention period</b>	The data will be retained for active use during any investigation and thereafter retained in an inactive stored form according to the law and national guidance.
<b>9) Right to Complain</b>	<p>You have the right to complain to the Information Commissioner’s Office, you can use this link <a href="https://ico.org.uk/global/contact-us/">https://ico.org.uk/global/contact-us/</a></p> <p>or calling their helpline Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate) There are separate National Offices for Scotland, Northern Ireland and Wales, (see ICO website)</p>

\* “Common Law Duty of Confidentiality”, common law is not written out in one document like an Act of Parliament. It is a form of law based on previous court cases decided by judges; hence, it is also referred to as 'judge-made' or case law. The law is applied by reference to those previous cases, so common law is also said to be based on precedent.

The general position is that if information is given in circumstances where it is expected that a duty of confidence applies, that information cannot normally be disclosed without the information provider's consent.

In practice, this means that all patient information, whether held on paper, computer, visually or audio recorded, or held in the memory of the professional, must not normally be disclosed without

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the consent of the patient. It is irrelevant how old the patient is or what the state of their mental health is; the duty still applies.

Three circumstances making disclosure of confidential information lawful are:

- where the individual to whom the information relates has consented;
- where disclosure is in the public interest; and
- where there is a legal duty to do so, for example a court order.