

# Legal Aspects of Cooperation and Necessary Action in Care Crises of Young People

**LEGAL BASICS**

- Children and Families Legislation
- The Children Act 1989
- The Children Act 2004
- Childcare Act 2006
- The Children and Families Act 2014
- The United Nations Convention on the Rights of the Child (UNCRC)
- Children in Care Legislation
- Care Standards Act 2000
- The Adoption and Children Act 2002
- Children (Leaving Care) 2000
- The Children's Homes (England) Regulations 2015

## The Children's Homes (England) Regulations 2015.

*In meeting the quality standards, the registered person must, and must ensure that staff—*

- seek to involve each child's placing authority effectively in the child's care, in accordance with the child's relevant plans;*
- seek to secure the input and services required to meet each child's needs;*
- if the registered person considers, or staff consider, a placing authority's or a relevant person's performance or response to be inadequate in relation to their role, challenge the placing authority or the relevant person to seek to ensure that each child's needs are met in accordance with the child's relevant plans; and*
- seek to develop and maintain effective professional relationships with such persons, bodies or organisations as the registered person considers appropriate having regard to the range of needs of children for whom it is intended that the children's home is to provide care and accommodation.*



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## The Children (Northern Ireland) Order 1995

- Where it appears to an authority that any body could, by taking any specified action, help in the exercise of any of the authority's functions under this Part, the authority may request the help of that body, specifying the action
- A body whose help is so requested shall comply with the request if it is compatible with that body's own statutory or other duties and obligations and does not unduly prejudice the discharge of any of its functions. These bodies are:
  - any Board;
  - any education and library board;
  - any Health and Social Services trust or special agency;
  - any district council;
  - the Northern Ireland Housing Executive; and
  - such other persons as the Department may direct for the purposes of this Article.

## Children and Young People (Scotland) Act 2014.

- A service provider or relevant authority must provide to the service provider in relation to a child or young person any information which the person holds which falls within subsection. Information falls within this subsection if the information holder considers that:
  - it is likely to be relevant to the exercise of the named person and functions in relation to the child or young person,
  - it ought to be provided for that purpose, and
  - its provision to the service provider in relation to the child or young person would not prejudice the conduct of any criminal investigation or the prosecution of any offence.
- The service provider in relation to a child or young person must provide to a service provider or relevant authority any information which the person holds which falls within subsection. Information falls within this subsection if the information holder considers that:
  - it is likely to be relevant to the exercise of any function of the service provider or relevant authority which affects or may affect the wellbeing of the child or young person,
  - (b) it ought to be provided for that purpose, and
  - (c) its provision to the service provider or relevant authority would not prejudice the conduct of any criminal investigation or the prosecution of any offence.

Source : Children in care Legislation, policy and guidance. Extracted on 10/03/2017 from <https://www.nspcc.org.uk/preventing-abuse/child-protection-system/children-in-care/legislation-policy-guidance/>.

**OBLIGATION TO COOPERATE**

Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children - key principles:

- safeguarding is everyone's responsibility: for services to be effective each professional and organisation should play their full part; and
- a child-centred approach: for services to be effective they should be based on a clear understanding of the needs and views of children.

**OBLIGATION TO COOPERATE**

Local Safeguarding Children Board must commission services for children who have been or may be:

- sexually exploited
- subject to Female Genital Mutilation (FGM)
- radicalised

## OBLIGATION TO COOPERATE

- Young carer's assessments must reach a view on whether any care tasks are "inappropriate" or "excessive."
- Local authorities must have in place a 'Designated Officer' to handle all allegations against adults who work with children and young people.

Source: Working Together to Safeguard Children 2015, Safeguarding in Schools: Protecting children. Reducing risks. Extracted on 10/03/2017 from <https://www.safeguardingschools.co.uk/working-together-to-safeguard-children-2015/>.



**OBLIGATION TO BE CONFIDENTIAL**

## The 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.

- Information given in circumstances where it is expected that a duty of confidence applies, cannot normally be disclosed without the information provider's consent.
- all patient/client information, whether held on paper, computer, visually or audio recorded, or held in the memory of the professional, must not normally be disclosed without the consent of the patient/client.
- It is irrelevant for example how old the patient/client is, or what the state of his/her mental health is; the duty still applies.

**OBLIGATION TO BE CONFIDENTIAL**

Three circumstances making disclosure of confidential information lawful are:

1. where the individual to whom the information relates has consented
2. where disclosure is necessary to safeguard the individual, or others, or is in the public interest
3. where there is a legal duty to do so, for example a court order

**OBLIGATION TO BE CONFIDENTIAL**

An organisation may be able to rely on disclosure being in the overriding safeguarding interest of the individual or others or in the public interest.

- Solid justification is required before individual rights are set aside and specialist or legal advice should be sought before the information is disclosed.
- Any decision to disclose should be fully documented.

**OBLIGATION TO BE CONFIDENTIAL**

If a disclosure is not permitted under common law the patient/client could initiate legal action not only against the organisation but also against the individual responsible for the breach.

Source: The Common Law Duty of Confidentiality.  
Extracted on 14/03/2017 from <https://www.health-ni.gov.uk/articles/common-law-duty-confidentiality#skip-link>.

**OBLIGATION TO INFORM**

Every person has a right to privacy under the European Convention on Human Rights (Article 8) and the Common Law Duty of Confidentiality

However:

- Sharing information appropriately is key to putting in place effective child protection services.
- You'll need to use your professional judgement based on the facts of the case to decide whether to share and what should be shared
- the safety and welfare of the child must be your key consideration

**OBLIGATION TO INFORM**

You'll need to use your professional judgement based on the facts of the case to decide whether to share and what should be shared.

You must have a clear and legitimate purpose for sharing information.

**OBLIGATION TO INFORM**

Ask for consent to share confidential information unless:

- asking for consent may increase the risk of significant harm to the child or young person.
- a delay in sharing information may increase the risk of harm to the child or young person.

To avoid any future dispute, it's better to get written consent. A person can withdraw consent at any time.

**OBLIGATION TO INFORM**

If you're not given consent to share information, you may still lawfully go ahead if it can be justified to be in the public interest. For example, to:

- protect children from significant harm
- promote the welfare of children.

Source: Information sharing and confidentiality for practitioners - things to know and issues to consider, extracted on 14/03/2017 from <https://www.nspcc.org.uk/globalassets/documents/information-service/information-sharing-confidentiality-practitioners.pdf>.



# CONTRADICTION?

**Obligation to inform**

**Obligation to confidentiality**



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