

Confidentiality and people under 16

Guidance issued jointly by the BMA, GMSC, HEA, Brook Advisory Centres, FPA and RCGP

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Of the estimated 52,000 sexually active 15-year old females in England in 1991, only 18,000 visited family planning clinics. Some of the remaining 34,000 benefited from a GP's advice but many young people are apprehensive about talking to doctors for fear that confidentiality cannot be respected.

- The duty of confidentiality owed to a person under 16 is as great as that owed to any other person. Regardless of whether or not the requested treatment is given, the confidentiality of the consultation should still be respected, unless there are convincing reasons to the contrary.
- Any competent young person, regardless of age, can independently seek medical advice and give valid consent to medical treatment.
- When young people consult a doctor other than their usual GP, they are unlikely to refuse a request for details to be passed to their GP, providing that they trust that their confidentiality will be respected by their own GP and the Primary Care Team.

Teenage sexual activity

Teenage sexual activity has continued to increase since the 1960s¹. Early unprotected sexual intercourse may increase a number of health risks for young women and young men; not least the physical and psychological risks associated with pregnancy and sexually transmitted diseases (STDs). Many teenagers, however, wish to control their own lives and will decide to have a sexual relationship. They are best helped by sympathetic counselling, in confidence, and having access to measures which minimise any risks.

This advice need not be confined to mechanistic approaches to avoidance of conception. Such information is important but it is best supplemented by encouraging in the young person a sense of personal worth and a sense of the value of health. The development of skills in personal relationships involves enabling adolescents to make decisions for themselves, not simply to respond to peer pressure or the influence of the media. Counselling can help in this.

Reasons for concern

In England and Wales in 1990, one in every 100 young women in the 13-15 age bracket became pregnant. Pregnancy in under-16s is not a planned event and half of these conceptions resulted in abortion. The high pregnancy rate for young women under the age of 16 is a continuing cause for concern. It has been rising over the last decade and stands at the highest level since records began in 1969. In its 1992 publication, *The Health of the Nation*, the Government set the target of halving the pregnancy rate in under-16s by the year 2000. In the

Netherlands, assurance of confidentiality in all contraceptive services has been a key factor in reducing the teenage pregnancy rate to the lowest of all developed countries.

The risks of STDs, including HIV/AIDS, are a further cause for concern. *The Health of the Nation* includes a target for reducing the reported incidence of gonorrhoea by 20 percent by 1995. This is intended largely as a marker for the incidence of all STDs. While STDs/HIV present risks to all sexually active age-groups, these risks may be particularly acute for young people, some of whom may have a higher than average rate of partner change. Some common STDs, eg chlamydia, can permanently damage fertility and it is particularly sad when this happens to a young person before she is ready to start a family. Young people of both sexes may benefit from confidential advice on prevention of HIV and other STDs, which can be given during consultations related to contraception or on other appropriate occasions.

The role of doctors

- GPs have a vital role in reducing teenage pregnancies, since of the estimated 52,000 sexually active 15-year females in England in 1991, only 18,000 visited family planning clinics.
- Many young people are apprehensive about talking to doctors for fear that confidentiality cannot be respected.
- Recent research² showed that almost 75 percent of patients under 16 and 50 percent of 16-19 year olds interviewed feared that their GP could not or would not preserve confidentiality regarding requests for contraceptive services.
- This is likely to deter many from seeking advice.
- A primary task, therefore, must be to educate young people about the confidentiality they can expect from their doctor. This is why we are issuing this note as clarification of good medical practice.

Consent to treatment

- Any competent young person, regardless of age, can independently seek medical advice and give valid consent to medical treatment.
- Competency is understood in terms of the patient's ability to understand the choices and their consequences, including the nature, purpose and possible risk of any treatment (or non-treatment).
- Parental consent to that treatment is not necessary.

- It is obviously preferable for young people to have their parents' support for important and potentially life-changing decisions. Often, however, young patients do not wish parents to be informed of a medical consultation or its outcome and the doctor should not override the patient's views.
- Establishing a trusting relationship between the patient and doctor at this stage will do more to promote health than if doctors refuse to see young patients without involving parents.

The legal position

The 1985 House of Lords' ruling in the Gillick³ case established the current legal position in England and Wales that people under 16 who are able fully to understand what is proposed and its implications are competent to consent to medical treatment regardless of age⁴. Thus, people under 16 are legally able to consent on their own behalf to any surgical, medical or dental procedure or treatment if, in the doctor's opinion, they are capable of understanding the nature and possible consequences of the procedure. Clearly, the more serious the medical procedure proposed, a correspondingly better grasp of the implications is required. Doctors should particularly consider the following issues when consulted by people under 16 for contraceptive services:

- whether the patient understands the potential risks and benefits of the treatment and the advice given;
- the value of parental support must be discussed. Doctors must encourage young people to inform parents of the consultation and explore the reasons if the patient is unwilling to do so. It is important for persons under 16 seeking contraceptive advice to be aware that although the doctor is legally obliged to discuss the value of parental support, the doctor will respect their confidentiality.
- the doctor should take into account whether the patient is likely to have sexual intercourse without contraception;
- the doctor should assess whether the patient's physical or mental health or both are likely to suffer if the patient does not receive contraceptive advice or supplies;
- the doctor must consider whether the patient's best interests would require the provision of contraceptive advice or methods or both without parental consent.

Consulting another doctor

Few patients are aware that they have the option of registering with another GP for contraceptive services only⁵ either because the patient is unwilling to consult her

own GP or because that GP does not provide contraceptive services. GPs who do not provide contraceptive services must advise young people seeking those services of colleagues whom they could consult. It is acceptable for another GP to offer contraceptive advice and treatment to a competent young person in such circumstances and this may provide a valuable opportunity to reassure the patient about confidentiality issues in general. It must, however, be explained to the patient that it is in her medical interests for her GP to be informed if contraception has been prescribed and of any medical condition discovered, which requires investigation or treatment. This is particularly important if the patient is at the same time under the active clinical care of her own GP or that of another doctor. Providing that young people trust that their confidentiality will be respected by their GP and the Primary Care Team, they are unlikely to refuse a request that information be passed to their usual doctor.

General advice for GPs

General practices should think about how they make their services attractive and readily accessible to teenagers. The range of issues to be considered is beyond the scope of this paper. Examples of good practice are detailed in the Department of Health Key Area Handbook⁶ on HIV/AIDS and sexual health.

Confidentiality

The duty of confidentiality owed to a person under 16 is as great as the duty owed to any other person. The statutory body, the General Medical Council states that:

"Patients are entitled to expect that the information about themselves or others which a doctor learns during the course of a medical consultation, investigation or treatment, will remain confidential."

An explicit request by a patient that information should not be disclosed to particular people, or indeed to any third party, must be respected save in the most exceptional circumstances, for example where the health, safety or welfare of someone other than the patient would otherwise be at serious risk".

Immature patients

The General Medical Council advises that disclosure without consent may be justified where the patient does not have sufficient understanding to appreciate what the advice or treatment being sought may involve, cannot be persuaded to involve an appropriate person in the consultation, and where it would, in the doctor's belief, be essential to the best medical interests of the patient. Thus it is clear that the doctor is not entitled to breach confidentiality unless all these conditions are met. Therefore, even when the doctor considers the young person is 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.

Exceptional circumstances

Although respect for confidentiality is an essential element of doctor-patient relationships, no patient, adult or minor, has an absolute right to complete confidentiality in all circumstances. Confidentiality must be balanced against society's interests in protecting vulnerable people from serious harm. Thus, in rare cases for example, a breach of confidentiality may be justified if the patient's silence puts others at risk and the doctor cannot persuade the patient to make a voluntary disclosure.

In exceptional circumstances, the doctor may believe that the young person seeking medical advice on sexual matters is being exploited or abused. The doctor should provide counselling with a view to preparing the patient to agree, when ready, to confidentiality being relaxed. This task assumes greater urgency if the patient, siblings or other minors continue to be in a situation of risk so that in some cases, the doctor will have to tell the patient that confidentiality cannot be preserved. Disclosure should not be made without first discussing it with the patient whose cooperation is sought. To breach confidentiality without informing the patient and in contradiction of patient refusal may irreparably damage the trust between doctor and patient and may result in denial by the young person that abuse has taken place.

Breach of confidentiality

In any situation where confidentiality is breached, the doctor must be prepared to justify his or her decision before the General Medical Council.

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References

1. In the mid-1960s, 4% of young women had experienced sexual intercourse by the age of 16. By the mid-1970s this percentage had risen to 9%. Today, 19% of young women report having had sexual intercourse before they reach the age of 16. Wellings K and Bradshaw S, 'First intercourse between men and women', Chapter 4 in *Sexual Attitudes and Lifestyles*, Johnson et al. Blackwell Scientific Publications, 1994.
2. Allen I, *Family Planning and Pregnancy Counselling Projects for Young People*, London, Policy Studies Institute, 1991.
3. *Gillick v Wisbech and W Norfolk AHA* [1985], 3 All ER 402 HL.
4. Scottish law goes further to recognise certain rights to self-determination of young people. The Age of Legal Capacity (Scotland) Act 1991 assigns various legal rights to people over the age of 12 but, as in England and Wales there is no minimum age for legal capacity to consent to medical treatment.
5. The RCGP has drawn particular attention to this option for consumer choice in its December 1991 policy statement on Family Planning and Sexual Health.
6. Copies have been sent to all FHSAs.