

4 Confidentiality Policy

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Introduction

This section will assist centres with creating a confidentiality policy that meets the advice^{UK} membership criterion. The confidentiality policy advice^{UK} requires you to operate is related to service delivery. We also define what should and should not be included in such a policy.

The model policy in this section is devised to provide you with a number of options - select those that best reflect your centre and the values within which you operate. The following model procedure is also available in Word format via e-mail to assist you in developing your own policy. If you would like to receive this please send an e-mail to membership@adviceuk.org.uk.

If you already operate a confidentiality policy you can use this document to establish if your current document will meet advice^{UK}'s membership requirements.

We realise that some advice^{UK} centres offer a number of services. The information in this briefing assumes that the confidentiality afforded to users rests with the advice centre alone, and not the other services such as day centres, meals, furniture schemes and counselling schemes. It is important that you protect the confidentiality of users of the advice service from other services your organisation offers.

advice^{UK} stresses that we recognise confidentiality should be applicable to the needs of users - we acknowledge that one-to-one sessions are appropriate in many cases but that users may be more comfortable with more open sessions. Equally some of you work from premises where confidentiality is difficult to achieve. We expect that if the user requires it, confidentiality should prevail, but if an alternative suits their needs, this is fine - provided it is the user's choice.

Why operate a Confidentiality policy?

Confidentiality is an essential component of an accessible service. Think of some of the issues users bring to advice services and the personal details they are asked to provide in order for you to assist. By providing an assurance of confidentiality you can enable a user to disclose a problem that they previously have not been happy to discuss with anyone else.

Also consider the experience many users have of other services - they may approach an advice centre because they feel intimidated by, or reluctant to talk to, the Benefits Agency or a Local Authority. Young people, refugees and offenders may feel

especially vulnerable. In order to provide the centre with a complete picture of their circumstances users need reassurance that they will not be judged, and that anything they tell you will not be shared with others without their knowing and giving their authority. The few exceptions to this are discussed in the section "Issues to be thought through."

In order for policies to operate successfully there needs to be commitment from the Management Committee and staff of the centre. A written document is a good starting point: it will promote understanding of the policy and be a useful reference point if problems arise or if users or funders require clarification of what policies you work to and why.

Issues to be thought through

LEGAL ISSUES

There is a legal framework for confidentiality. You need to be aware of these issues in order to make an informed decision.

DISCLOSURE OF CRIME

There may be instances when users confide that they have committed/are about to commit a crime. In English Law there is no duty to disclose a criminal offence so being aware of the crime is not assisting in that crime.

The exception to this is under The Prevention of Terrorism (Temporary Provisions) Act 1989 which makes it an offence to fail to give information which may help to prevent acts of terrorism or apprehend a terrorist.

It is however, an offence to aid, abet, counsel or procure the commission of an offence. It is therefore important that the advisor makes sure that s/he does not give, or in any way can be seen to be giving, encouragement or assistance in any way.

Do not destroy the relationship you are developing with the user by alarming them but ensure that if you have concerns about the information the user is disclosing, you tell them:

- ▶ that what they are saying/about to say could break the law;

- ▶ that you can assure them of confidentiality but need to warn them not to give any further details and they should seek advice from a solicitor;
- ▶ you may be later summonsed as a witness.

POLICE ATTENDING THE CENTRE

The police may approach the centre to gather information about a user. If you have advance warning of the visit adopt the following procedure:

- ▶ inform the police that you operate a confidentiality policy and offer to go through its contents.
- ▶ ensure all workers and users are aware that the police will be attending the centre - thereby giving users the option to leave.
- ▶ the police officers should not be allowed to enter any room where records are kept.

PROVIDING INFORMATION TO THE POLICE

If you fall under pressure to reveal information to the police e.g. you are threatened with arrest, the following is the legal position:

The police have powers under the Police and Criminal Evidence Act 1984 (PACE). This provides general powers to police officers, lawfully in any premises, to seize anything they reasonably believe is evidence in relation to an offence under investigation, which might otherwise be concealed, lost, altered or destroyed. Preventing access to a room where records are kept forestalls the use of these powers. It is important to note that PACE only allows access to materials which would have been available to the police before 1986 and personal, confidential case records were not included.

The police can summons a worker as a witness. Failure to attend may result in the Court issuing a warrant to arrest and bring the witness before the Court. Failure to do so could result in a fine or committal to prison.

The centre can negotiate with the police or when attending the magistrates court and explain case records are confidential. The centre should also inform the user that the summons has been received and the penalties which may be levied. Workers should not discuss the evidence to be given with the user.

CRIMES COMMITTED IN THE ADVICE CENTRE

Unfortunately, break-ins are a common occurrence in advice centres. If police are called following a break-in, care should be taken to ensure that cases are in locked cabinets, though you will not be able to disturb evidence!

If case records have been stolen the police should be told that they are confidential and should be returned unread if possible. If you need to call the Police because of a crime committed in the advice centre eg. theft from the waiting room, follow the steps outlined in the previous section on "Police attending the centre".

CHILD ABUSE

Some crimes receive a higher media profile and others can provoke a reaction from workers. Child abuse is one such issue. You may receive an enquiry from a person who tells you they are the abuser or your client may be the victim of abuse (the Children Act 1989 ensures that children can make enquiries independent of their parents so long as they have enough understanding and intelligence to make up their minds).

The legal position is that whilst some agencies, notably the police, have a statutory duty to report suspicions or evidence of child abuse to social services departments, this duty does not apply to voluntary services offering confidential services.

It is up to the individual centre to identify a strategy which meets your own requirements. Youth agencies for example will often view the protection of the child as their priority aim and will pass on details to the relevant authorities. Other centres may choose to maintain confidentiality in order to ensure that there is somewhere for people to talk about abuse.

It is important that any approach taken is accepted and understood by everyone and applied consistently. It is equally important that users of the services are made aware of the parameters within which they can safely seek advice before they are in the interview room.

Whatever your approach, you should ensure that the user is referred onto a professional agency who have the resources and skills to counsel and support them.

DATA PROTECTION ACT

The new Data Protection Act 1998 will bring the UK in line with the European directive on data protection. The new legislation will apply to manual files as well as

those held on computer. In relation to confidentiality it provides a useful point to think through - under the new legislation the people you hold information about have to be given certain information and have the right to object to what you do with it in some circumstances. This is not new and accords with good practice - it means that you should take care to case record only relevant information and avoid judgmental remarks.

Once the Act is brought fully into force, further clarification will be required as to how certain provisions apply to advice centres. advice^{UK} intends to issue a Quality Briefing once definite guidance can be established. In the meantime an overview of the key provisions and implications is provided as part of advice^{UK}'s Achieving Excellence Quality Briefings manual. An order form for the manual is supplied at the end of this briefing.

For up-to-date information you can also visit the Data Protection website at www.dataprotection.gov.uk

FRAUD ACT

The Social Security Administration (Fraud) Act 1997 came into effect on 1st July 1997.

Under the Fraud Act advisers must not knowingly assist in any way with a fraudulent claim. This has led centres to consider their actions if a user admits to making a fraudulent claim. You can choose to take the same approach as that advised in the section on committing a crime - you are not under an obligation to pass details to the Benefit Agency - and should not as this would breach confidentiality.

You should follow the following procedure:

- Explain the legal implications and possible consequences.
- Record that you have passed on this information.
- Make it clear that the user has a duty to disclose their change of circumstances.
- If the person wishes to continue to use the centre services but is unwilling to give notification of their change in circumstance, you should consult the manager/senior worker to consider ceasing to advise or assist the user with the claim. This will not stop you advising the user on benefits they are able to claim.

RISK OF HARM

A worker may be alerted to the possibility that a user may harm themselves or others. This should be discussed with colleagues and options such as a referral to other more appropriate agencies considered. Remember you should only contact bodies such as social workers or doctors with the user's consent.

There are increasing concerns about users who may exhibit threatening behaviour, whether to other users or to staff. The centre should have a separate policy which sets out safety issues but it is accepted that some instances justify the calling of the police/ambulance service - do not put other users in danger.

CONFLICT OF INTEREST

Confidentiality will need to be breached when the centre identifies a conflict of interest which necessitates the centre informing one party that it can no longer act on their behalf. By its very nature this will draw attention to the fact that the centre is acting for the other party. This should be the only information which is disclosed.

advice^{UK} wishes to see a policy relating to service delivery but whilst you are developing a policy it is useful to think about the confidentiality of personnel records and papers relating to the running of the organisation. Ensure that you have locked cabinets to store sensitive materials, and define access to papers. Think through how to protect personal information such as health matters and HIV status.

REHABILITATION OF OFFENDERS ACT

This Act provides ex-offenders with the right not to reveal convictions in most situations when the offence has become "spent" after a rehabilitation period without a further offence.

There are varying rehabilitation periods - the heavier the sentence the longer it takes for a conviction to be spent. For the majority of jobs it makes it unlawful to dismiss an employee or refuse to employ a person because he or she has a spent conviction. It is good practice only to ask potential employees to disclose spent convictions.

There are a number of exemptions to an individual's rights not to reveal a spent conviction.

The centre & confidentiality

WHO IS COVERED BY THE POLICY?

The user should be able to assume that anything they disclose to a worker in the centre will remain within that centre.

Confidentiality rests with the centre, not individual workers, so it is perfectly acceptable for all workers in the centre to have access to case records, take part in discussions relating to the user's enquiry. Remember that administration and clerical workers will also have access to user details so ensure that they receive details of the policy and understand the implications of its operation.

The Management Committee are not covered by the confidentiality policy - they should not have access to user records or be aware that an individual has consulted the centre. Clearly the Management Committee should be aware of the policy and have an involvement in dealing with any potential breach of confidentiality - the ultimate responsibility for implementing policies rests with the Management Committee and workers should be accountable to them.

Confidentiality rests with the user. There will be some instances where other people may act on the users behalf - collecting and bringing in information, for example. You have a responsibility to the user to ensure that they have given this person their permission - again, in writing is best.

It is important that you do not disclose that the user has visited the centre or is currently in the centre premises unless you have their consent to reveal the information. So partners, children, relatives enquiring if the individual has visited/is visiting should be made aware of the confidentiality policy. You can check with the user if it is all right to confirm their presence. You will apply the same approach to social services, probation officers, the police - only talk with them about the user, even to the extent of confirming they visit the centre, with the user's permission.

Try to avoid working through a 3rd party such as a relative or social worker. On a practical note information can be missed or get confused. If a user is unable to visit the centre think about a home visit.

WORKING WITHIN A CONFIDENTIAL SETTING.

Think through the systems and procedures you work with and establish how confidentiality can be assured:

INCOMING/OUTGOING POST

Ensure all workers who have contact with the post are aware of the confidentiality policy. Always check with users that it is all right to send letters to their home - this might not be the case in a relationship break up. The same applies to telephone calls - it won't always be the user that answers the phone - do not give details to other people.

CONTACT WITH A THIRD PARTY/REFERRAL SERVICE.

Whoever you contact on behalf of a user, or about a user, you need to ensure you have the user's consent. There are benefits in obtaining written consent - many agencies will want to see the user's written consent before they reveal details e.g. banks, some Local Authority departments. The centre should have written proof that they are working on the user's behalf.

When you refer on, ensure that you obtain written permission to pass on a copy of the case record to a solicitor, or 2nd tier agency for example. Equally, when a solicitor contacts the centre requesting the user's case records, ensure you ask for the user's request in writing.

Remember: the case records are equally the property of the centre - you should always keep a copy of the case record at the centre even when the case is completed.

CONTACT WITH USERS

There will be instances when you need to contact users - to send them further information, arrange an appointment:

- ▶ Always ensure you have their permission to contact them at home and check what you should do if someone else answers the phone.
- ▶ Don't leave messages on answer phones - you don't know who has access to them.
- ▶ Don't fax information to a user unless you have checked that they are by the fax.
- ▶ It is increasingly common for users to use e-mail to contact centres. advice^{UK} is currently seeking advice about the confidentiality aspects. You should also think through the priority e-mails take over phone calls and visits.

STORING RECORDS

Think through where user details are stored:

- ▶ Notebooks used by workers will need to be shredded or disposed of carefully.
- ▶ Case records should be stored in lockable cabinets. This also applies to the storage of client records kept on floppy disc. You should also use security passwords to access computers. Think through the storage of information on the hard disc of computers - when disposing of the computer ensure that all data has been wiped - take advice on this.
- ▶ It is good practice to keep records for 6/7 years - the time in which a civil claim can be made and so think through how you will dispose of archived records.

SOCIAL POLICY

You should ensure that social policy reports safeguard against disclosing identifiable user details - unless they expressly agree. This also applies when producing monitoring reports. Generally, workers should be encouraged not to discuss users' cases in a public place even when the user's name is not mentioned.

PREMISES:

IS YOUR WAITING AREA PRIVATE FROM VIEW OF OTHERS?

If you have premises with a shop front, consider displaying posters and stands to distract from people waiting. If you are not able to achieve privacy ensure you check that users are comfortable with the situation and take measures to provide privacy - e.g. in an interview room - if they require it.

INTERVIEW AREAS

We know that many centres work in premises which do not afford privacy and confidentiality. Again, if users are happy with this then the issue does not arise, but you should work towards providing interview rooms for those people who require such a setting.

Interview rooms should provide confidentiality in terms of lack of visibility and transmission of sound. Use a radio or insulate the walls to achieve this.

WORKING AREA

Consider if users in the waiting area can overhear workers discussing cases or making telephone calls - this would breach confidentiality.

OUTREACH

There may be circumstances where a worker takes case records to an outreach session. By far the best arrangement is to ensure they have adequate time to return to the centre to store the records. Alternatively at some outreach sessions you may have the facility to store records. Consider this carefully - filing cabinets should be locked and you should seek assurance that access to the cabinet is limited. Think how safe and secure the outreach building is generally.

STORING RECORDS AT HOME

There may be occasions when following an outreach session or home visit the worker is not able to get back to the centre in time. Try and ensure that they can. If not, ensure that the worker can store them securely at home and that the workers friends and family cannot access them. Ensure that these occasions are kept to a minimum and records are returned to the centre the following day.

Model Confidentiality Policy

The following model policy is devised to provide you with a number of options - select those that best reflect your centre and the values within which you operate. The policy is also available in Word format via e-mail to assist you in developing your own policy. If you would like to receive this please send an e-mail to membership@adviceuk.org.uk.

Our instructions to help you understand the model are denoted by a ➡ symbol - these pieces of text should be deleted from your finished policy. If you adopt the model you should replace "THE ORGANISATION" with the name of your own centre.

Confidentiality Statement

- ➡ **Start with a statement which confirms the organisation's commitment to providing a confidential service.**

THE ORGANISATION is committed to providing a confidential advice service to its users. THE ORGANISATION believes that principles of confidentiality must be integrated across all aspects of services and management. THE ORGANISATION believes its users deserve the right to confidentiality to protect their interests and safeguard THE ORGANISATION's services. The following will be displayed in the waiting areas/interview room:

- ➡ **Think through a statement to display in the waiting area:**

THE ORGANISATION offers a confidential service - nothing you tell us will be shared with any other organisation or individual without your expressed permission.

- ➡ **If you are unable to assure confidentiality for all users add the following to your statement:**

If you would prefer to be seen in an interview room please tell the receptionist/ the adviser.

Definition of Confidentiality

- ➡ **Define what confidentiality means in the organisation:**

THE ORGANISATION understands confidentiality to mean that no information regarding a service user shall be given directly or indirectly to any third party which is external to the Staff and Manager, without that service user's prior expressed consent to disclose such information.

THE ORGANISATION recognises that all users should be able to access THE ORGANISATION's services in confidence and that no other person should ever know that they have used THE ORGANISATION's services.

THE ORGANISATION recognises that information may be indirectly given out through staff informally discussing cases. All staff should ensure that no discussions relating to an individual user of THE ORGANISATION can take place outside of THE ORGANISATION's premises. The Management Committee will not receive details of individual users or their case.

THE ORGANISATION recognises that users need to feel secure in using THE ORGANISATION's services in a confidential manner. THE ORGANISATION will ensure all users are afforded confidential interview space (if it is required) and will ensure blinds, radios and other mechanisms are used to ensure no breach of confidentiality can occur inadvertently.

- **You may have to amend the above paragraph to include the words in brackets if you have only selected rooms that are confidential.**

THE ORGANISATION will not confirm the user's presence in the centre or use of the centre without obtaining the user's consent.

- **If you have taken the decision that you will disclose allegations of child abuse include a paragraph here which states how you have reached that decision.**

Statistical Recording

THE ORGANISATION is committed to effective statistical recording of service users to enable THE ORGANISATION to monitor take-up of service and to identify any policy issues arising from advice services.

It is the Manager's responsibility to ensure all statistical records given to third parties, such as to support funding applications, monitoring reports for the local authority shall be produced in anonymous form, so individuals cannot be recognised.

Case Records

It is the Manager's responsibility to ensure all case records are kept in locked filing cabinets. All case records must be locked away at the end of each working day. All information relating to service users will be left in locked drawers. This includes note books, copies of correspondence, calculation sheets and any other sources of information.

Expressed Consent To Give Information

It is the responsibility of advice workers to ensure that where any action is agreed to be taken by THE ORGANISATION on behalf of a client, that client must firstly sign an authorisation form. This should be placed on the client's file.

THE ORGANISATION workers are responsible for checking with clients if it is acceptable to call them at home or work in relation to their case. All staff must ensure they make no reference to THE ORGANISATION when making telephone contact with clients.

THE ORGANISATION's workers are responsible for checking with clients that it is acceptable to write to them at home or work in relation to their case.

All details of expressed consent must be recorded on the case file.

Breaches of Confidentiality

THE ORGANISATION recognises that occasions may arise where individual workers feel they need to breach confidentiality. THE ORGANISATION recognises, however, that any breach of confidentiality may damage the reputation of THE ORGANISATION's services and therefore has to be treated with the most serious of approaches.

On occasions where a worker feels confidentiality should be breached the following steps must be taken:

➤ Throughout the following procedure we use the term Manager - you may need to replace it with a term which reflects how your organisation operates.

- 1. The worker should raise the matter immediately with the Manager.*
- 2. The worker must discuss with the Manager the issues involved in the case and explain why they feel confidentiality should be breached and what would be achieved by breaching confidentiality. The Manager should take a written note of this discussion.*
- 3. The Manager is responsible for discussing with the worker what options are available in each set of circumstances.*
- 4. The Manager is responsible for making a decision on whether confidentiality should be breached. If the Manager decides that confidentiality is to be breached then they should take the following steps:*
- 5. The Manager should contact the Chair in the first instance, or Vice Chair of the Management Committee. The Manager should brief the Chair/Vice Chair on the full facts of the case, ensuring they do not breach confidentiality in doing so. The Manager should seek authorisation to breach confidentiality from the Chair/Vice Chair.*

6. *If the Chair/Vice Chair agrees to breaching confidentiality, a full written report on the case should be made and any action agreed undertaken. The Manager is responsible for ensuring all activities are actioned.*
7. *If the Chair/Vice Chair does not agree to breach confidentiality then this is the final decision of the organisation.*
8. *In no circumstances should any breach of confidentiality be discussed at this stage with THE ORGANISATION's Complaints Officer. This is to ensure that any future complaints or investigations arising from breach in confidentiality can be carried out in an independent manner.*

Legislative Framework

THE ORGANISATION will monitor this policy to ensure it meets statutory and legal requirements including the Data Protection Act, Children's Act, Rehabilitation of Offenders Act and Prevention of Terrorism Act. Training on the policy will include these aspects.

Ensuring the Effectiveness of the Policy

All Management Committee members will receive a copy of the confidentiality policy. Existing and new workers will be introduced to the confidentiality policy via induction and training. The policy will be reviewed annually and amendments should be proposed and agreed by the Management Committee.

Date procedure was agreed: _____

Date of review: _____

Person responsible for review: _____

Confidentiality Policy Checklist

- Have you agreed a confidentiality statement?
- Have you developed a system for informing all staff and publicising your confidentiality policy to all users?
- Have you defined what confidentiality means for your organisation?
- Have you identified all the people who are bound by this confidentiality procedure and do they understand their role in implementing the policy?
- Have you identified a person with lead responsibility for this area?
- Have you identified systems for the following areas of work which often cause difficulty implementing confidentiality policies?
 - Dealing with incoming post.
 - Contacting a third party on behalf of users that ensures user's consent
 - Referral to/Accessing services provided by a third party.
 - Storing notebooks, records of interviews and case files in lockable cabinets and defined who has access to the contents of these cabinets.
 - Making telephone calls/sending letters to your client at home/work.
 - Disposing of archived client materials
 - Workers discussing users' cases in a public place even when the users names are not mentioned.
 - Conflicts of interest are dealt with promptly and with minimum details disclosed.
- Have you checked the following legislation and how they may apply to you?
 - Data Protection Act
 - Children's Act
 - Rehabilitation of Offenders Act
 - Prevention of Terrorism Act
 - PACE
 - Fraud Act

- Have you agreed a system for gaining 'Expressed consent to give information'?
- Have you set up a system to safeguard against disclosing identifiable client details when producing your monitoring reports?
- Have you identified how confidential information can be stored?
- Have you identified a process for destroying confidential materials?
- Do you ensure all interviews rooms are confidential in both transmission of sound as well as view, and do you check this when running outreach services?
- Is your waiting area private from view of others outside your agency?
- Have you set out a standard procedure for dealing with potential breach of confidentiality that ensures accountability to the MC?
- Have you set out a complaints procedure for dealing with all organisational complaints including confidentiality?

Sample documents

Once you have read through this briefing you may decide to introduce/revise documentation relating to the confidentiality policy.

Authorisation slips are a useful tool. The following is an example:



Anytown Advice Centre
Authorisation Slip

I authorise:

- ▶ the organisation to act on my behalf and
- ▶ you to provide the information they request in connection with my case.

Name: _____

Signature: _____

Date: _____

Authorisation slips can be adapted to fit the needs of your centre.