

Confidentiality



This briefing is one of a series to support youth information, advice, counselling and support services (YIACS) to develop policies in:

- Equality & Diversity
- Active Involvement and Participation
- Confidentiality

Youth Access will require YIACS to have these policies in place as part of new full membership criteria from April 2008. The policies are minimum criteria for service standards and underpin 'Youth Access Quality Standards for YIACS'.

The purpose of this briefing is to offer a guide to the context and content of a confidentiality policy. It is not intended as a detailed analysis of the legal and other issues surrounding confidentiality, but it will point you to other resources.

What is confidentiality?

The law recognises two kinds of confidential relationship:

- The formal confidential relationship found between, for example, a counsellor or a lawyer and their clients.
- Any relationship arising within a context in which a young person might reasonably expect their confidentiality to be respected, including for example when a young person talks to a support worker or a housing worker in confidence.

Young people's information, advice, counselling and support services (YIACS) are therefore recognisably offering young people confidential services.

The need for a confidentiality policy

- Services offering confidentiality to young people can sometimes be seen as a challenge to other organisational cultures and practices and indeed to parental rights. In such a highly sensitive area, a clearly written policy will support your agency to uphold an important ethical principle, whilst also recognising the legal framework in which you are operating.
- Confidentiality is a complex area, particularly when providing for under 18s, where child protection issues may arise. A comprehensive policy should guide your practice in protecting young people's rights to privacy balanced against your duty to protect; helping to clarify the responsibilities of staff and managers.
- In a context where information sharing is seen as a key mechanism for securing the protection and well-being of young people, a written policy is essential. In addition, the greater prominence given to parents' roles in supporting young people increases the demand to clarify how and on what basis you will communicate any information to a third party. An explicit policy is thus necessary to promote understanding amongst young people, partners and other stakeholders.

Can we respect all young people's right to use our services regardless of their age?

- The law does not treat young people's right to consent to advice and counselling equally. Parental consent may be required in some instances, particularly for under 16s. Unless there are exceptional circumstances, it is generally advisable to gain parental consent for all under 13s.
- Your policy should identify your procedures for ensuring under 16s' 'competence' to consent to using your services without parental consent. This will include formal assessment practices, e.g. for counselling, as well as more informal work and contacts.

How and what should we communicate to parents?

- Where you assess the need for parental/carer's consent ensure this is asked for in writing.
- Even if parental consent is given, it does not mean a parent has a right to know the content of the service's work with their child: they are entitled to expect the same level of confidentiality as those able to consent independently.
- Make it clear in your policy what, how and on what basis information will be shared with parents and carers.

What information can we pass on to other agencies?

Your policy must:

- Detail the process for obtaining young people's (preferably written) consent to sharing specified information. The only exception is where your agency judges there is a serious risk of harm. In this case your child protection procedures will need to be implemented.
- Ensure any proposal to share information on behalf of a young person is necessary, e.g. it supports an agreed referral to another agency or is needed to protect the young person.
- Set out when and how permission is actively sought from young people to share information and the manner in which the specified information is to be passed on.
- State the evidence you require to assure yourselves that when another agency/individual requests information about a young person, this is what the young person concerned has specifically consented to.
- Include the requirement for written information sharing and referral protocols with agencies with which you have active cross-referral relationships. Make clear your position on confidentiality and the circumstances in which you will share information.

Our funders want us to give information about the young people using our service?

- If you receive public funding, there is likely to be increasing pressure to disclose information about young people using your services. There is unlikely to be a difficulty about passing on statistical information or presenting case studies that are sufficiently anonymised.
- It is legally questionable whether local authorities or other bodies can ask for identifying information about young people without their consent. It is worth making sure your policy refers to the law in order to help these other agencies to understand it – they may not be clear.
- Be aware, however, that this may not prevent threats to withdraw funds unless your agency complies with their request.

What kinds of information should we cover in our policy?

- Include: All the verbal and written information a young person shares or requests: personal, identifying details, as well as issues and concerns.
- Exclude: Statistical information that does not identify individuals.

How can we balance our confidentiality policy with our child protection policy?

- Balancing the need to offer young people at 'greatest risk of serious harm' access to your service without compromising your legal and moral duty to protect is likely to prompt the greatest dilemmas.
- Confidentiality can never be an absolute and your policy should not attempt to prescribe all the events or situations that constitute 'serious harm', thereby triggering the need to consider a disclosure.
- Your policy should include your service's decision-making processes on disclosure. You will need to specify the people involved to ensure the whole organisation, including trustees, agree all matters relating to a breach of confidentiality, including child protection.
- Your policy should also require a written record of all occasions when a breach of confidentiality is considered or taken; include the events, relevant facts and decisions taken.
- Written records may help protect your agency if events emerge subsequently that throw your original decision into doubt. Your Professional Indemnity Insurers may also take issue with you if you have no records, especially for example, if legal proceedings take place.

How should we link our confidentiality policy to the wide range of issues it is likely to impact on?

Your policy needs to cover the point at which young people first make contact with you to potentially several years after they have ended their relationship.

Confidentiality is likely to impact on a wide range of your service's policies and practices. It should include references to a number of other policies; the most significant are:

- staff employment and criminal record checks;
- child protection,
- data protection;
- working with parents;
- assessment, including risk assessment;
- case notes and recordings;
- supervision.

Your policy should also be cross-referenced in any referral and information sharing protocols or other agreements, e.g. off-site services in schools.

This is all very complicated, how can we explain it easily to young people?

- While most young people can expect to receive a confidential service, you must ensure they understand the limits placed by your service on this.
- Leaflets and public displays of a young people-friendly version of your policy should be available on your premises with the opportunity to talk further with a member of staff.
- Your policy should also be generally explained as part of any 'one to one' work.

Should our confidentiality policy apply equally to all those who work in our agency?

- It must apply to everyone who works or sits on the management committee – although there will be different levels of responsibility.
- If you employ seconded staff from other agencies, or allow other services to use your premises, you must develop a written agreement with the relevant organisation regarding confidentiality. Young people must be made fully aware of any differences.

Useful reading and contacts

The Law

Hamilton, C. (2005) Working With Young People Legal Responsibility and Liability, The Children's Legal Centre

This is an easy to read and authoritative guide to the law, which has the benefit of understanding the context of your work with young people.

Herbert, K. (2006) Data Protection When Dealing with Young People – Keeping your client's confidence, Advice Services Alliance

This briefing has been developed in association with Youth Access and is available at: www.youthaccess.

Government Guidance:

DfES (2006) Information Sharing: Practitioners' guide

DfES (2006) Information Sharing: Further guidance on legal issues

DfES (2006) Working Together to Safeguard Children

Other resources:

There is a series of articles and responses to Government policy together with legal opinion from Bindmans concerning sexually active under 18s in our online Resources section.

Go to: www.youthaccess

Quality Standards for Youth Information Advice and Counselling Services, Youth Access (1998)

The standards, together with a number of supporting documents, including for example counselling assessment, are available free to Youth Access members at: www.youthaccess

Brook, the national sexual health advice service for young people, has published a number of resources on the issue of confidentiality. Go to: www.brook.org.uk