



TC08 – Confidentiality and Data Protection Policy and Procedure

Purpose

- To ensure that the principles of confidentiality are applied in all our working practices and interactions with the Young People and adults who attend TOPCATS, their parents/carers, their families and also our Support Workers and volunteers. TOPCATS will ensure that all information is kept secure and processed in line with the Data Protection Act 1998.
- To ensure that all information is collected, recorded, stored, shared and disposed of in the best interests of the Young Persons, with regard for their human rights and in line with legislation.
- To ensure the Young Persons and their families/carers are aware of the organisation's confidentiality and data protection policy and procedure.

Scope

- All TOPCATS staff and volunteers and third parties involved in the care of the Young Persons and the Young People who attend.

Policy

- The Young Persons rights to confidentiality must be safeguarded in accordance with the common law duty of confidentiality and Article 8 of the Human Rights Act 1998. The care service employee will use information only in the best interests of the Young Persons and where possible with their express consent. All information, verbal, written, electronic or photographic/video/audio recording is managed in line with the Data Protection Act 1998 and The Access to Health Records Act 1990.

Procedure

Data Collection and storage

- Staff must ensure that any information collected and stored is limited to that which is essential for the care and safeguarding of the Young Persons and not excessive. This relates to personal data and health information essential to establish individual needs and provide staff with the means to plan care and support. It must be accurate and kept up to date.
- Staff must gain the consent of the Young Persons and/or their parents/carers regarding the keeping and processing of personal information. It must be explained to the Young Person and/or their parent/carer, when information is first obtained, why this information is recorded and what it will be used for.
- Personal information kept regarding the Young People must be kept securely. The Management is responsible for making local arrangements about which staff can have access to locked files/offices, computer information and passwords.
- Any personal records must be on a password protected computer or kept on a disk or USB which is stored securely and/or encrypted.
- Staff must retain information and data securely in locked storage and filed under the Young Person's name when not in use. Electronic data should be password protected and access limited to essential users only. Any information shared must be justified by the need for staff to perform their professional duties. Photographs and video or sound recordings should not be shared without the express consent of Young Persons or their legal advocates.
- It must not be kept longer than is necessary and must be obtained and used only for specified and lawful purposes which have been made known to the subject of the data.
- TOPCATS staff providing care and support to Young Persons will have access to privileged and sensitive personal information. Whilst it is necessary in providing support to Young Persons that staff have ready access to information, it is vital that Young Persons can expect any personal information to be kept strictly confidential. It is important however that there is a distinction between confidentiality and secrecy.

Disclosure

- Data and information should only be shared with those identified as eligible to access it. This must only be shared for the purposes of ensuring individual needs are met and for the safe delivery of care. So information passed to a Support Worker may be shared with further members of TOPCATS staff where they are concerned with the care and treatment of the Young Persons.

- Staff must be advised of the requirement to confirm the identity and right of access of any third party seeking information about a Young Person in writing, by telephone or in person before any disclosure is made. No information regarding a Young Person, either written or verbal, should be given directly or indirectly to any third party external to TOPCATS without the expressed consent of the Young Person and/or their parent/carer. The only exception to this is where failing to share the information would put that Young Person, or others, at risk of significant harm or where it would undermine the prevention, detection or prosecution of a serious crime.
- To avoid accidentally disclosing information, discussions and conversations regarding any Young Person/s must be held in private and in a discreet manner.
- When receiving information described as 'confidential', TOPCATS staff must explain that it may not be possible to maintain confidentiality if the information is such that they are obliged to pass it onto the Management (Anne-Marie Battrick) e.g. allegations of abuse or criminal activities.
- The safety and welfare of the Young People is paramount when making decisions on whether to share information about them. Where there is concern that a Young Person may be suffering or is at risk of suffering significant harm or there is concern regarding criminal activity then the public interest and the Young Person's safety and welfare must be the overriding consideration.
- If a member of TOPCATS staff believes that it is necessary to breach confidentiality due to the above considerations then they should take the following steps:
 - Seek consent from the individual Young Person and/or their parent/carer (if appropriate) to share the information
 - If consent is refused and the staff member still has strong concerns they should raise the matter immediately with the Management team.
 - If the Management agrees that there is a clear risk of significant harm they will then follow the procedures as set out in the Safeguarding policy and procedure.

Consent

- As far as reasonably practicable, written consent to the use of personal information should be gained from each Young Person or their advocate. Inform the subject when gaining consent of the specific details of the information/action to be shared and with whom. This should form part of the information provided at the outset of attending TOPCATS.
 - If the Young Person lacks the mental capacity to consent to information being shared, staff may share information if it is in the Young Person's best

interests (in accordance with the principles of the Mental Capacity Act 2005). Staff should still clearly explain to the Young Person the reasons for the decision to share information and accurately record these.

- Where a Young Person has appointed a Lasting Power of Attorney under the Mental Capacity Act 2005 that person should be consulted where information is to be shared in someone's best interests.
- If there are any concerns in these areas you should seek advice from your supervisor.
- Access to data and records must be managed in line with legislation. Permission to access health information may be sought by Young Persons or their advocates in writing and access must be managed appropriately. It is good practice to involve Young Persons with the collection and recording of personal data as this ensures focus on the needs and rights of each individual. This paragraph should be read in conjunction with the Access to Information Policy and Procedure.
- The use of social media should be avoided unless strict management of information is assured to protect the rights of all individuals in our care. Staff must not discuss confidential information about Young Persons in any place where third parties might access it, such as on an outing.
- Staff must ensure that all data and information held pertains only to that individual. Care must be taken to limit recording to identify only the Young Person whose record it is, and not to include sensitive identifiable data about others in Care Plans and record entries.
- Confidentiality with respect to a Young Person may only be breached if:
 - Where information is required by statute or court order
 - Information suggests the Young Person is at risk of harm to themselves or from others, or others may be at risk of harm from the Young Person, and where the passing on of information would be in the person's interest, or the wider public interest.
 - Information, if withheld, could put others at risk; and where the passing on of information would be in the public interest.
 - Where the Young Person may have broken the criminal law and where there is justification in the public interest to breach confidentiality, Section 115 of the Crime and Disorder Act 1998 gives a power (but not an automatic duty) to organisations to disclose information to the police 'for the prevention, detection and reduction of crime'. This applies in England and Wales.
- Any information held should only be for specified purposes. Information provided for one purpose (e.g. next of kin details for emergency contact) cannot be used for an entirely different purpose (e.g. fundraising) unless consent has been obtained.
- All parents/carers are requested to give their permission for TOPCATS to take photographs of their children and their activity here at TOPCATS and for these photographs to be used to promote what we do and/or to celebrate the children's'

achievements. No photographs will be taken or displayed without the parents/carers permission.

Disposal of confidential information

- In the event of a Young Person's death or leaving TOPCATS as a service, records should be removed from circulation and retained in secure archive storage. There is a requirement to retain care and clinical records for not less than 3 years in line with Part 3 section 17 of The Care Homes Regulations 2001. It is good practice to retain records for up to 20 years to meet insurance requirements.
- When confidential information no longer needs to be stored, destruction of paper records must be by shredding to ensure no risk of third parties accessing sensitive data. Destruction of electronic records by deletion must be undertaken by means that ensure no future retrieval is possible.