



JustUs Confidentiality Policy

1. Introduction

- 1.1. Confidentiality is a central issue necessary to enable an open and empowering relationship between JustUs workers and clients and to protect the privacy of clients' lives. All information shared by clients shall be kept confidential unless there are circumstances that legally require the disclosure of the information to third parties.

2. Aims and Objectives

- 2.1. JustUs workers will ensure that clients understand the following as soon as contact is made with them in order to satisfy the Data Protection Act 1998:
 - 2.1.1. What information will be collected by JustUs, why it will be collected, how it will be used, why and how it will be shared with third parties, how it can be accessed by the data subject, how it will be stored and when it will be destroyed.
 - 2.1.2. In what circumstances confidential information will be disclosed to third parties without the client's consent.
- 2.2. Information sharing is essential to enable effective joined-up working between agencies with different remits, so relevant information needs to be shared as required to enable a good level of support and to reduce the risk of harm to self and others. Sensitive personal data shall only be shared with informed and explicit consent, unless there is a legal requirement to share information. Due to the nature of JustUs' work, all client data shall be treated as sensitive personal data.
- 2.3. If JustUs is asked to provide confidential data about service users to other organisations, employers, friends or family members, workers should:
 - 2.3.1. Ensure the services user has given explicit and informed consent (which should be written if at all possible).
 - 2.3.2. Anonymise data where this will serve the purpose(s) of data sharing.
 - 2.3.3. Share information only on a 'need-to-know' basis. This means that information that is not relevant to the purpose of data sharing is not permitted.
 - 2.3.4. Be able to justify the sharing of information
 - 2.3.5. Make a record of the decision to share in cases where there is not explicit and informed consent.

See Appendix 1 for information regarding Caldicott Principles

3. Data sharing via telephone and email, and security of records

- 3.1. JustUs will not share sensitive personal data by fax due to the inherently insecure nature of fax systems.
- 3.2. All confidential information should be safeguarded against unauthorised disclosure (e.g. having passwords on computers that are changed regularly and procedures to check the identity of telephone callers).
- 3.3. If inquiries are made by telephone, workers should take the details of the inquirer and phone back if the identity of the caller is not certain. Confidential information should only be shared in secure surroundings (i.e. where the call cannot be overheard).
- 3.4. A service user may refuse to give permission to share personal information. In exceptional cases this information can be shared, if there are significant risks posed to someone's vital interests in not sharing this information (see below under the heading disclosures). Information must only be shared on a need-to-know basis. This means only sharing the minimum information necessary to serve the best interests of the service user.
- 3.5. Service users and carers should be advised why and with whom information concerning them will be shared, to enable informed consent to be obtained.
- 3.6. Paper copies of confidential material about service users will be kept securely in a locked cabinet when not in use.
- 3.7. Records must not contain material that may unwittingly be communicated to others who have no need of such information. Likewise, uncorroborated or speculative material about service users must not be entered onto their notes. Staff and clients should be aware that, in certain circumstances, files can be subpoenaed and disclosed to the client if a Subject Access Request is made. Clients have the right to examine their own files and must be informed of this right during initial contact and how to request to do so.
- 3.8. Information about service users is confidential to the organisation as a whole, and not to individual workers. However, information on a service user should only be discussed with other workers in the same organisation for genuine purposes (e.g. in supervision, to cover work while on leave or for advice on a particular case). General discussion about a service user, which does not serve the best interest of the service user is a breach of confidentiality and may lead to disciplinary action. Information must be restricted to those who have a genuine 'need to know' on the basis of their job function and clients must consent to this during the initial contact.

4. Sharing information without consent

- 4.1. Confidential information can only be disclosed to third parties without the client's informed and explicit consent after discussion with and approval by at least one other JustUs worker or trustee. The nature and reasoning of this decision should be recorded as soon as possible. In the event that there is an immediate threat to life then workers should call the appropriate emergency service immediately.

- 4.2. Circumstances in which disclosures will be made include:
 - 4.2.1. to protect children at risk of significant harm as defined by the Children Act 1989 (see appendix 2 for definition)
 - 4.2.2. to safeguard a vulnerable adults in circumstances of public interest.
 - 4.2.3. to protect the public from acts of terrorism as defined in the Prevention of Terrorism Act 1971
 - 4.2.4. as a duty to the Courts
 - 4.2.5. in circumstances related to benefit fraud
 - 4.2.6. under the Drug Trafficking Offences Act 1986
 - 4.2.7. to prevent or detect a serious crime (to be agreed on a case by case basis)
 - 4.2.8. to ensure the service provides a duty of care in a life-threatening situation (e.g. serious illness or injury, suicide and self-harming behaviour)
 - 4.2.9. to protect the service provider in a life-threatening situation (e.g. calls to police regarding a violent service user)
- 4.3. Any decision to disclose confidential information without the consent of the service user is one that could potentially breach their human right to a private life and should therefore be taken extremely seriously. Every effort should be made to discuss the situation with the service user, encouraging the service user to contact the relevant authorities themselves, unless this would prejudice the outcome of any investigation or criminal proceedings. All decisions should be recorded in the service user's case notes. The Information Commissioner's Office can be consulted regarding any data protection issues on their helpline number:
- 4.4. Disclosure of having committed a serious criminal offence will be reported to the Police or relevant authority. JustUs will co-operate with investigations by the Police where we have relevant information. In all cases this disclosure will be made by at least two JustUs workers and the decision will be recorded as soon as possible. Where any doubt about disclosing information without consent exists, workers should make use of the ICO helpline or by asking a 'what if' question to the relevant authority (the ICO' helpline number is 0303 123 1113).
- 4.5. In circumstances where disclosures are made by a third party who has either witnessed or has first-hand information that a crime as defined above has been committed we will encourage and support the individual to report the matter. The information will be passed to the appropriate authority, normally the police, in the event that the individual refuses to report the matter.
- 4.6. JustUs will consider on a case-by-case basis whether to disclose confidential information about a service user in the event of other possible serious offences or serious risk to the public.
- 4.7. The Data Protection Act 1998 prevents the misuse of personal information and all JustUs data processing must comply with the requirements of the act. The Act defines 8 categories of 'sensitive personal information'. For the purposes of JustUs data processing, all service user-identifiable data shall be treated as being sensitive.

- 4.8. With regard to potentially violent or abusive service users, factual information should be recorded about the need for particular precautions in a service user's records and related risk management plans and other information systems. It is essential that relevant information is transmitted effectively within JustUs and between relevant organisations. It is critical that such information is still shared only on a need-to-know basis.
- 4.9. Workers should be aware of the possibly severe consequences of disclosing confidential information without proper authority and that their involvement at JustUs may be suspended or terminated.
- 4.10. Under the Children Act 1989 the interest of the child is always paramount, overriding any other public interest consideration. Where a child is deemed to be at risk of significant harm JustUs will take a proactive approach to safeguard the welfare of the child. Parents and where appropriate children and young people should be informed of a referral unless to do so placed a child at increased risk.

5. The nature of consent

- 5.1. The fundamental principle governing the use of information that individuals provide in confidence to JustUs should be that of explicit informed consent, as data is likely to include information of a sensitive nature. For the consent to be explicit, the service user must give it in obvious and unambiguous terms. Informed consent requires that the service user has the capacity to give this consent.
- 5.2. For consent to be valid the person must:
 - 5.2.1. Have the capacity to take the particular decision;
 - 5.2.2. Have received sufficient information to base the decision on; and
 - 5.2.3. Not be acting under duress.
- 5.3. An individual will be presumed to have capacity to give consent unless there are indicators that this is not the case, as required by the Mental Capacity Act 2005. Mental Capacity should be presumed unless the worker becomes aware of an impairment of the mind or brain (e.g. substance use).
- 5.4. A signed consent form needs to be obtained unless it is impossible (verbal consent is satisfactory in exceptional circumstances). Informed consent does not last indefinitely. Service users can withdraw consent at any time and should be regularly reminded of their right to do so.
- 5.5. All service users accessing JustUs services will be asked to consent to support and assistance being offered and provided. This will usually be in the form of a verbal agreement; however written consent may be sought for complex cases.

Appendix 1 Caldicott Principles

- Justify the purpose for which the information is needed.
- Only use personally identifiable information when absolutely necessary.
- Use the minimum personal identifiable information possible – if possible use an identifier number rather than a name.
- Access to the information should be on a strict need to know basis.
- Everyone should be aware of his / her responsibilities to respect clients' confidentiality.
- Understand and comply with the law. The most relevant legislation is the Data protection Act 1998, the Police & Criminal Evidence Act 1984 and the Human Rights Act 1998.

Appendix 2: Children Act 1989 Definition of Significant Harm

JustUs Confidentiality Policy – Reviewed January 2018

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(Taken from the Liverpool Children Safeguarding Board definition)

The Definition of Significant Harm

The Children Act 1989 introduced the concept of **Significant Harm** as the threshold that justifies compulsory intervention in family life in the best interests of children.

Section 47(1) of the Children Act 1989 states that:

Where a local authority... have reasonable cause to suspect that a child who lives, or is found, in the area and is suffering, or is likely to suffer, Significant Harm, the authority shall make, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare... the enquiries shall be commenced as soon as practicable and, in any event, within 48 hours of the authority receiving the information.

Under Section 31 of the Children Act 1989 a court may only make a **Care Order** (committing the child to the care of the local authority) or **Supervision Order** (putting the child under the supervision of a social worker, or a probation officer) in respect of a child if it is satisfied that:

- The child is suffering or is likely to suffer Significant Harm;
- The harm or likelihood of harm is attributable to a lack of adequate parental care or control.

Under Section 31(9) of the Children Act 1989, as amended by the Adoption and Children Act 2002:

Harm means ill-treatment or impairment of health or development including for example impairment suffered from seeing or hearing the ill-treatment of another*

Development means physical, intellectual, emotional, social or behavioural development;

Health means physical or mental health;

Ill-treatment includes sexual abuse and forms of ill-treatment which are not physical.

*The Adoption and Children Act 2002 broadens the definition of Significant Harm to include the emotional harm suffered by those children who witness domestic violence or are aware of domestic violence within their home environment.

There are no absolute criteria on which to rely when judging what constitutes Significant Harm. Consideration of the severity of ill-treatment may include:

- The degree and extent of physical harm;
- The duration and frequency of abuse or neglect;

- The extent of premeditation;
- The degree of threats and coercion;
- Evidence of sadism, and bizarre or unusual elements in child sexual abuse.

Each of these elements has been associated with more severe effects on the child, and/or relatively greater difficulty in helping the child overcome the adverse impact of the ill-treatment.

Sometimes, a single traumatic event may constitute Significant Harm. In other circumstances Significant Harm is caused by the cumulative effect of significant events, both acute and long-standing, or the damaging impact of neglect which interrupts and changes or damages the child's physical and psychological development.

When judging what constitutes Significant Harm it is necessary to consider:

- The family context, including the family's strengths and supports;
- The child's development within the context of the family and within the context of the wider social and cultural environment;
- Any special needs, such as a medical condition, communication difficulty or disability that may affect the child's development and care within the family;
- The nature of harm in terms of the ill-treatment or failure to provide adequate care;
- The impact on the child's health and development;
- The adequacy of parental care.

Under Section 31(10) of the Children Act 1989:

Where the question of whether harm suffered by a child is significant turns on the child's health and development, his health or development shall be compared with that which could reasonably be expected of a similar child.

It is important always to take account of the child's reactions, and his or her perceptions, according to the child's age and understanding.

2. Categories of Abuse and Neglect

Someone may abuse or neglect a child by inflicting harm or by failing to act to prevent harm. In the context of child protection, abusive or neglectful behaviour is behaviour towards a child or young person which has the deliberate intention of causing harm or is so reckless to the consequences that harm is caused.

The following definitions are taken from Appendix A of *Working Together to Safeguard Children, 2013*.

They have been included to assist those providing services to children in assessing whether the child may be suffering actual or potential harm.

2.1 Physical Abuse

A form of abuse which may involve hitting, shaking, throwing, poisoning, drowning, suffocating or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child. (See **Fabricated and Induced Illness Procedure**).

2.2 Emotional Abuse

The persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child's emotional development.

It may involve conveying to children that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may include not giving the child opportunities to express their views, deliberately silencing them or making fun of what they say or how they communicate. It may feature age or developmentally inappropriate expectations being imposed on children.

These may include interactions that are beyond the child's developmental capability, as well as overprotection and limitation of exploration and learning, or preventing the child participating in normal social interaction. It may involve seeing or hearing the ill-treatment of another. It may involve serious bullying (including **cyber bullying**) causing children frequently to feel frightened or in danger, or the exploitation or corruption of children.

Some level of emotional abuse is involved in all types of maltreatment of a child, though it may occur alone.

2.3 Sexual Abuse

Involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing and touching outside of clothing. They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse (including via the Internet). Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children.

2.4 Neglect

The persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development.

Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to:

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- Provide adequate food, clothing and shelter (including exclusion from home or abandonment)
- Protect a child from physical and emotional harm or danger
- Ensure adequate supervision (including the use of inadequate care-givers); or
- Ensure access to appropriate medical care or treatment.
- It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.