

# MindOut LGBTQ Mental Health Project

## Confidentially Policy

This Policy applies to all staff and volunteers.

MindOut believes that confidentiality for our clients is a vital part of service delivery. We believe a policy is important to protect clients, employees and volunteers from the possibility of information being passed onto individuals or organisations who have no right to that information and to reassure clients that good care will be taken with information which they give to us. For this reason we are committed to a policy of confidentiality with regard to information given to us by or about individual clients, employees and volunteers. This policy should be carefully explained to clients when they join our services so they know what to expect.

Also refer to the following MindOut Policies in conjunction with this confidentiality Policy:

- Non-Instructed Advocacy Policy
- Data Protection Policy
- Safeguarding Adults and Children at Risk Policy
- Safeguarding Alerts Procedure
- Safeguarding Escalation Procedure
- Mental Capacity Policy

### 1. Why we have a policy

A Confidentiality Policy is necessary for the following reasons:

- To protect clients, employees and volunteers from the possibility of information about them being passed on to individuals or organisations who have no right to that information.
- To reassure clients that good care will be taken with information which they give to MindOut employees and volunteers and to be clear as to the circumstances when information can be shared with others.
- To provide guidance to employees and volunteers on the extent to which confidentiality is to be protected, circumstances in which they may breach confidentiality, and measures to be taken for the safeguarding of information.
- To assist MindOut employees and volunteers to comply with legal and statutory requirements for the disclosure of information.

- To reassure clients wishing to make a complaint to or about MindOut that the confidentiality of any complaint will be given high priority in so far as this is consistent with the need to investigate the complaint.

## **2. General statement of confidentiality**

2.1 Clients have the right to expect a confidential service and a full explanation when and if confidentiality is breached.

2.2 All of MindOut's employees and volunteers are required to respect the right of clients and of other employees and volunteers to privacy and confidentiality as far as possible within the constraints of legal requirements and the safety of others.

2.3 Confidentiality relates to information not only given deliberately by the person concerned or by other people about the person, but also information acquired accidentally or through observation or via a third party.

2.4 Information about a person will only be disclosed to other individuals or organisations with the person's consent and in line with the person's wishes. For exceptions to this please see circumstances in which 'confidentiality may be breached'.

2.5 Usually, clients disclose confidential information to one worker. However MindOut workers sometimes need to share information with other team members, the Director and admin staff when necessary. Clients should be made aware that confidentiality is kept within the service not an individual worker.

2.6 Where it is thought necessary to pass on information to another individual or organisation this will be on a strictly 'need to know' basis. The consent of the person will be sought if at all possible, and that person will be informed that the information has been passed on and to whom it has been passed.

2.7 For the purposes of audit and investigation, trustees and other authorised persons - e.g. Community Legal Service auditors - may have access to relevant casework files. However, MindOut will aim to protect confidentiality and limit access to only where it is needed.

2.8 Clients will be made aware of our confidentiality policy at the earliest opportunity possible. Services will ensure a statement about confidentiality is included where relevant in service literature and be explained to clients at the start of our work with them.

## **3 Care of information**

3.1 MindOut staff and volunteers will take care not to be overheard when discussing confidential information on the phone, or with the client or appropriate staff, accepting the limits set by working in a shared office/open plan venues.

3.2 If a worker has to call a client back and the client is not available they will not leave a message containing confidential information unless it has been agreed with the client. They will also not pass on confidential details to any other person who answers the telephone unless this has been specifically requested. If someone contacts the services asking if a person is a client of MindOut, that information will not be disclosed without the persons consent.

3.3 All staff should follow MindOut's Data Protection and Archiving and Retention Policy regarding the safe storage and disposal of confidential information. They should only keep necessary information relating to clients, volunteers and personnel records.

## 4. Circumstance under which confidentiality may be breached

### 4.1 Significant Risk

MindOut is bound to comply with local authority safeguarding policies and procedures. This means it may be necessary to break confidentiality in situations where a worker believes that a client is acting, or going to act in a way that could cause serious harm themselves, or put others at significant risk, or when a client has disclosed potential or actual serious harm to a vulnerable person or child.

In such situations the worker will inform the person of MindOut's policy and will first try to gain consent from the client to break confidentiality. Workers will, where possible, try to discuss with client why they need to disclose the potential risk and explore the client's feelings about this. However, if consent to share information cannot be obtained and if action by MindOut is necessary to ensure the safety of the client or others then action may be taken without their consent.

Where there may be a duty of care to pass on information the decision whether or not to do so will remain one of individual judgement. However unless it is an emergency the advice of the Team Leader or Director must be sought first. If this is not possible, a supervisor will be informed as soon as possible following the action taken. Discussions about any breach of confidentiality will be noted in supervision records. When deciding whether to break confidentiality consider the following questions:

- Do we have a duty to break confidentiality?
- How serious is the intent?
- How great is the potential danger to the client or to another person?
- Is there any other way of avoiding potential harm?

When it is decided that information must be passed on to another individual or organisation this must be limited to those who need to know the information. A record of the breach of information should be made in the client's records and an incident report should be completed.

**4.2 Working in the best interest of clients who lack capacity** When working with clients who are deemed to lack capacity to give consent around issues of confidentiality staff should first refer to the five statutory principles of the Mental Capacity Act (2005) in order to help the client to make decisions/participate in the decision making around what information is shared and to whom.

Where best interest decisions are made on behalf of a client who lacks capacity information will only be shared to third parties on a 'need to know' basis and every attempt will be made to involve the client in this process. It is likely this would be in relation to a safeguarding issue. See Non-Instructed Advocacy Policy for further guidance. The director and/or manager should always be consulted where a client's capacity is being questioned.

### **4.3 Legal and Statutory Requirements**

There are a number of legal and statutory requirements that may require MindOut to break confidentiality these include, but are not limited to:

- reporting notifiable diseases to the Director of Public Health where appropriate
- reporting accidents at work in certain circumstances to the Health and Safety Executive
- passing on information on terrorist activities, and information requested on road accidents involving personal injury, to the police
- reporting on trafficking in illegal substances that comes to the notice of MindOut's staff or volunteers.
- giving evidence in court if a sub-poena is issued
- replying to certain specific enquiries from Government Departments e.g. Department of Employment or Department of Social Security or the Inland Revenue. The agency will check the legal status of any such enquiries on an individual basis.

Where a worker identifies a potential legal requirement to breach confidentiality they must always discuss this with the Team Leader or Director who will seek legal advice before taking action.

MindOut will ensure that all legal requests for information are treated individually and will be checked first to ensure the agency is required to provide this information. Requests from statutory bodies will be asked to be made in writing, even when there is a legal obligation on MindOut to comply with the request.

Workers and volunteers are required to familiarise themselves with MindOut's Confidentiality Policy and to work within its boundaries. Breaches of confidentiality outside those specified above will be treated as a serious matter and will result in action under the organisation's Disciplinary Policy.

## **5. Recording confidential information**

5.1 MindOut keeps written records of all individual client work and of the groups it runs. These records are stored in locked filing cabinets and destroyed after seven

years. This information is recorded for the benefit of the client and worker to provide a record of the work undertaken and to allow MindOut to monitor its services.

5.2 Written records, files or any personal information relating to clients remain at the MindOut office unless there is prior agreement from the Team Leader or Director. Personal information, telephone numbers etc belonging to clients are not be stored in workers diaries or personal mobile phones.

5.3 Any confidential information stored on computers is protected by passwords. All backed up data is encrypted.

5.4 Clients have the right and are welcome to see any records and information held about them. No other third party or agency can have access to the notes without the individual's prior permission. The only exception to this is situations where we are legally required to provide access, as outlined above. Information regarding a client may be withheld from them only in relation to a safeguarding matter where sharing the information would put themselves or others at risk.

## **6. Complaints**

6.1 People who wish to make a complaint either to MindOut about another agency/ individual or about an aspect of MindOut's services or a MindOut employee/ volunteer may be concerned about the confidentiality of information they are giving. The preservation of confidentiality will be given high priority, subject to the exceptions listed above in section 3 and/or if it is necessary to breach confidentiality in order to properly investigate the complaint. The permission of the complainant will always be sought for this but in cases where the welfare of the complainant or other people is seriously at risk it may be necessary to breach confidentiality even if that permission is withheld.