Confidentiality Policy Statement

Advocacy Support Cymru (ASC) is committed to the delivery of a first class confidential service. Clients entrust us with their personal information in order that we can provide them with the advocacy services they require. To maintain this trust, it is important that ASC provides, and is seen to provide, a confidential service. This means ensuring that all client and staff information is processed fairly, lawfully and as transparently as possible.

This policy should be read in conjunction with the Data Protection Policy.

Confidentiality Policy

1 Purpose

1.1 This document sets out ASC's policy on confidentiality and covers: -

1.1.1 What is meant by confidentiality

1.1.2 General principles of confidentiality

1.1.3 The legal considerations in regard to confidentiality

1.1.4 Circumstances in which confidentiality must be breached

1.1.5 Other points about confidentiality

1.1.6 Written information and records

1.1.7 Complaints about breaches of confidentiality

1.1.8 Review

1.2 Community Advocates, Independent Mental Capacity Advocates and Independent Mental Health Advocates will commit to the Confidentiality Policy and the confidentiality of information relating to the clients whom they work with

1.3 Managers and Non-operational staff will commit to the Confidentiality Policy and the confidentiality of information relating to ASC staff

1.4 All staff must sign the Confidentiality Agreement when they start employment, which remains in effect for the duration of their employment.

1.5 ASC staff will uphold the Data Protection principle that information will only be used for the purposes for which it is collected

2 Scope

2.1 All staff are covered by this policy.

2.2 This policy does not cover Agency Workers, Contractors or Consultants.

2.3 This policy does not form part of any contract of employment and it may be amended at any time.

3 Monitoring

3.1 This policy will be reviewed on a three-yearly basis, or as soon as possible after relevant legislation changes

4 What is meant by Confidentiality?

4.1 Confidentiality is about maintaining the privacy of information that has been entrusted by one person to another.

5 General Principles of Confidentiality

5.1 Any discussion regarding confidential information should only take place when absolutely necessary and should be kept to a minimum.

5.2 ASC will always maintain the confidentiality of the people who use, and who work for, the organisation except in exceptional circumstances, which are detailed below.

5.3 Operational

5.3.1 ASC staff will consider the need to share information about a client with other staff members on an individual basis, based on whether it benefits the client. For example: -

5.3.1.1 If an IMCA and IMHA are working with the same client, the client is likely to receive a better service if they share information

5.3.1.2 If a client is transferring between a Community Advocate and IMHA (or vice versa), or during periods of leave when a new advocate is taking responsibility for a client; the client benefits from the new advocate knowing the full case background.

5.3.1.3 A client receives a better service when the advocate can ask for advice from colleagues within the same team and/or during peer supervision (although in this circumstance, it is advisable for the advocate to consider whether it is necessary to share the client's name or simply an anonymous scenario)

5.3.1.4 A client is better supported by a knowledgeable, guided and well supported advocate; this happens when they can discuss the case with their line manager

5.3.1.5 This list is not exhaustive

5.4 Non-operational

5.4.1 ASC recognises that there are non-operational circumstances relating to confidentiality amongst staff

5.4.2 For example, there is confidentiality expected between staff and their manager, their team, the Finance department, HR, Director and peer supervision group

5.4.3 Office confidentiality shall be considered along the same general principles as outlined above relating to Operational Confidentiality. That is, whilst an employee can expect confidentiality to be maintained, if it benefits the employee (or the general working of ASC) then confidentiality may be broken

6 Operational Procedures

6.1 Operationally, this means that people who work or volunteer for ASC will **NOT**:

6.1.1 Discuss what they have been told by an individual with anyone who is not an ASC staff member or volunteer, without the individuals consent.

6.1.2 If the individual lacks capacity to consent to their information being shared, a decision will be made about whether it is in the individual's best interest for the advocate to share said information. This must be done within the remit of the advocate's role and in accordance with the Non-Instructed Advocacy Policy.

6.1.3 ASC will only provide information to other organisations when permitted in the specific instructed role as an Independent Mental Capacity Advocate (IMCA) or a Non-Instructed Community Advocate or Independent Mental Health Advocate (IMHA).

6.1.4 Publish information which could identify individuals, without consent.

6.2 ASC recognises that it will be necessary for staff to discuss individual cases in supervision sessions with their line manager.

6.3 Outside of supervision sessions, it may be necessary for an ASC staff member or volunteer to discuss confidential information with their ASC colleagues, for example: -

6.3.1 Where the staff member or volunteer is distressed by what they have been told;

6.3.2 If the staff member or volunteer will be absent because they work part time, is on holiday, is sick etc;

6.3.3 If the staff member or volunteer is unsure about how to respond to the person;

6.3.4 If the staff member or volunteer is concerned about their personal safety;

6.3.5 If the line manager has concerns about the advocate not maintaining professional boundaries, or is not acting in accordance with ASC's agreed procedures;

6.3.6 To share and improve practice with other ASC Advocates i.e. within Peer Supervision;

6.3.7 The above list is not exhaustive.

6.4 In these scenarios, it should be considered whether it is necessary to share the clients name or whether the scenario (based on an anonymous client) is sufficient

6.5 Periodically, some client cases will be reviewed for quality control, to ensure consistency of service provision, and to ensure that appropriate relationships are maintained between advocate and clients. An Advocacy Manager or staff member appointed for the purpose will carry out such reviews.

6.6 The initial decision on whether to breach confidentiality will be the responsibility of the Advocacy Manager.

6.7 The Director (or the Advocacy Manager in their absence) is responsible for reporting Child Protection concerns as the designated officer.

6.8 Any breaches of confidentiality will be reported to the Director and the Executive Committee as soon as possible.

7 Non-Operational Procedures

7.1 In practice within the office, this means:

7.1.1 HR may be told something in confidence that then needs to be acted on, which is likely to need to break confidence: for example, a complaint or concern about another member of staff

7.1.2 A manager may need to share information with HR or the Director (or someone else) in order to get more support or to ensure the continued smooth working of the organisation

7.1.3 A member of a peer group may need to raise something that was said within peer supervision to their manager, HR or the Director if they felt that it fell outside the peer supervision terms of reference \\mastersvr\shared\Policies and Procedures\Procedures\ASC Peers Terms of Ref v2.docx

7.1.4 This list is not exhaustive

8 The Legal Position on Confidentiality

8.1 There are a range of statutory provisions that limit or prohibit the use and disclosure of information and similarly a range of statutory provisions that require information to be used or disclosed.

8.2 There are areas of law which constrain the use and disclosure of confidential advocacy information.

8.3 Common Law Duty of Confidentiality

8.3.1 This is not derived from an Act of Parliament but is built up from case law where practice has been established by individual judgements.

8.3.2 The key principle is that information should not be used or disclosed, except as originally understood by the client.

8.3.3 Confidentiality can be breached 'in the public interest', that is, where there may be other vulnerable people at risk, but this should be decided on a case by case basis.

8.4 General Data Protection Regulation and the Data Protection Act 2018

8.4.1 Data Protection Legislation provides a framework that governs the process of information that identifies living individuals' personal data.

8.4.2 Processing includes holding, obtaining, and recording, using and disclosing information. The legislation applies to confidential client information but it also encompasses wider use of personal data (staff records).

8.4.3 There are six principles of Data Protection that must be followed when processing an individual's data, which ASC will always comply with.

8.4.4 Please see the ASC Data Protection Policy for more information.

8.5 Human Rights Act 1998

8.5.1 Article 8 of the Human Rights Act establishes a right to "respect for private and family life'.

8.5.2 This underscores the duty to protect the privacy of individuals and preserve the confidentiality of their records.

8.6 Terrorism Act 2000

8.6.1 This Act makes it an offence not to report any concerns in regard to suspected terrorist activity.

9 Circumstances when Confidentiality must be Breached

9.1 There are certain circumstances when ASC must breach Confidentiality.

9.1.1 If ASC receives information which relates to a specific, or suspected terrorist threat;

9.1.2 In the case where the Police have a warrant to inspect information that ASC has in its possession;

9.1.3 If the Police question ASC or any of its staff regarding any knowledge of a past crime;

9.1.4 If a Court orders the release of information;

9.1.5 If ASC has any concerns in regard to child protection issues;

9.1.6 If ASC is seriously concerned about the personal safety of others, including the person for whom they are providing an advocacy service;

9.1.7 If ASC has concerns in regard to the " All Wales Protection of Vulnerable Adults" policy and procedures, in respect of a person who lacks capacity to consent to a referral being made;

9.1.8 If ASC deems it to be in the "Best interests" of the client, in line with the duties of the Independent Mental Capacity Advocate or Non-Instructed Independent Mental Health Advocate or Community Advocate, where the client is unable to consent to information sharing

10 Other Points about Confidentiality

10.1 In cases where the Police or the Courts have a warrant to inspect information that ASC has in its possession, the client or clients involved will be informed of what will happen.

10.2 If this is not possible due to a lack of capacity as defined in the Mental Capacity Act 2005, ASC will share that information in line with the Data Protection Legislation.

10.3 ASC will record if information was shared, on what authority and who was consulted about disclosing; unless we are instructed by the Police or the Court that such disclosure may jeopardise an ongoing Police investigation.

10.4 If the Police or Court requires sight of documents that we hold from another professional (third party), we have an obligation to provide this information.

10.5 Where that third party is not a professional (i.e. family member), we may still provide this information to the Police or Court if it was gained during the production of an IMCA report.

10.6 Before any disclosure is made by an ASC staff member or volunteer with regards to abuse, the client who the information is about should be encouraged to report the information to the relevant authorities themselves.

10.6.1 They will be offered support to do this by an ASC staff member.

10.7 If the person does not agree to disclose the information themselves (or lacks the capacity to agree), ASC will pass on the information to the relevant authorities.

10.8 If an ASC staff member or volunteer receives a request for information about any person connected with ASC, they will inform the person making this request about ASC's Confidentiality Policy.

10.9 If a staff member or volunteer is given information about any person connected with ASC by an outside body or individual, they will inform that body or individual about ASC's Confidentiality Policy and ask if this information is relevant to the decision to be made and in relation only to the advocate's specific case involvement.

10.10 Any information received (relating to a client) will be shared with the client we are working for, unless doing so would put another individual or the client at risk of serious harm (in these cases ASC will require written confirmation that we must not disclose the information).

10.11 We will normally disclose information in order to establish the client's wishes and views.

10.12 However, we would encourage everyone to: -

10.12.1 Exercise sensitivity;

10.12.2 Respect the privacy of the individual;

10.12.3 Not to disclose information about the individual without their consent;

10.12.4 Appropriate support will be given to clients / staff / volunteers if any information that is disclosed to them causes concern or distress.

10.13 In cases where we are working on a non-instructed basis with clients who lack capacity to consent to information being disclosed to third parties, ASC recognises that we may have to disclose confidential information in order to gain the best possible outcome for our client. We will do this if it is within the specific remit of the IMCA, Non-Instructed IMHA or Non-Instructed Community Advocacy role.

10.14 Any information disclosed will be necessary and specific to the decision to be made and will be kept to an absolute minimum.

10.15 The decision will be made by both the advocate involved in the case and the Advocacy Manager. If there is any disagreement about what

information can be shared, the final decision will rest with the Advocacy Manager.

10.16 ASC staff members share data on ASC's client IT database, Advocases.

10.17 ASC staff will uphold the Data Protection principle that client's information will only be used for the purposes for which it is collected. For example, an Independent Mental Health Advocate will not use the records of an Independent Mental Capacity Advocate for any purpose even if they share a client.

10.18 In cases where our client is deceased, the Common Law Duty of Confidentiality will apply and no information will be disclosed unless ordered by a Court or a Police Officer in possession of a warrant to gain information.

10.19 In most cases staff and / or volunteers will always explain to a client when and why they are obliged to disclose any information they have, or are given, about the person to any third parties outside ASC. There are, however, some exceptions to this: -

10.19.1 When disclosing such information may leave individuals at risk of abuse or harm;

10.19.2 Where we have child protection concerns;

10.19.3 When disclosure may jeopardise an ongoing or future Police investigation;

10.19.4 When we have concerns about possible terrorism;

10.19.5 If disclosure could put ASC staff or volunteers at risk of physical harm;

10.19.6 When a client is deemed to lack capacity for the decision being made and ASC has either been instructed to complete an IMCA report, or is acting on a "best interests" basis in regards to requests for information from anyone other than the decision maker. The Advocacy Manager will decide this on a case by case basis.

10.20 When using any third party organisation to help with communication, ASC will clearly explain the Confidentiality Policy and Procedures. Consent is sought and recorded.

11 Interpreters

11.1 It is the advocate's responsibility to determine any conflict of interest that the interpreter may have. For example, to ensure that the interpreter is not a family member of the client or professional involved and is not employed by the Health Board / Local Authority to interpret for the client.

11.2 Ideally, the interpreter will not work for the Health Board / Local Authority at any time during which the client is receiving advocacy support. Where this is not possible, due to the limited number of interpreters available, the advocate should be made aware and discuss any potential real or perceived conflict of interest with their manager, this conversation, conflict of interest and outcome must be recorded.

11.3 The interpreter will sign the confidentiality agreement.

11.4 The advocate will meet with the interpreter in order to ensure that they understand the advocacy role and are able to explain this to the client.

11.5 The advocate will ensure that the interpreter understands what is expected of them; they are not allowed to pass on any information to others

11.6 The advocate and interpreter will meet the client.

12 Written Information and Records

12.1 ASC operates an "open files" policy in accordance with the Data Protection Act (DPA). Client's may apply to see any information that is held (including any information that has been sent to them by a third party) that is pertinent to them.

12.2 However, if disclosure of information might lead to serious risk of harm to others, ASC reserves the right to withhold such information. This decision will be made by the Advocate on a case by case basis, although complex

decisions would be discussed with the Advocacy Manager. The decision would be recorded in the case notes within ASC's organisational database.

12.3 Where the person lacks capacity to make a subject access request, ASC will refer to our Data Protection Policy.

12.4 ASC will treat any handwritten notes collected by advocates with the same care as we treat electronic information. The "rough notes" will be disposed of in a secure manner.

13 Complaints about breaches of Confidentiality

13.1 If anyone feels that this policy has been breached, they should be encouraged to make a complaint using ASC's Complaints Policy (for operational issues) or the Grievance Policy (for non-operational, office-based issues)

13.2 If any staff member is found to be in breach of this policy, it will constitute Gross Misconduct under ASC's Disciplinary Policy and Procedure

This document was revised in August 2023. It is due for review in August 2026.

The organisation reserves the right to alter the provisions of this policy from time to time.

Adopted by the ASC Executive Committee	
Signed	G. C. Oliver ***Chair of Trustees***
Print Name	Graham Oliver
Date	