

CR33 – Data Protection and Confidentiality Policy and Procedure

Serendipity Healthcare Ltd
Unit 5 Millennium Way, Dunston, Chesterfield, Derbyshire, S41 8ND



1. Purpose

- 1.1 To detail the rights of Service Users relating to confidentiality and data protection and issues that staff need to be aware of when processing confidential information within Serendipity Healthcare Ltd.
- 1.2 This is one of a suite of policies that relates to Data Protection, Information Governance, Data Quality and Security and the Human Rights of Service Users and dovetails to form a framework that ensures full legal compliance and best practice.
- 1.3 To support Serendipity Healthcare Ltd in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
SAFE	S2: How are risks to people assessed and their safety monitored and managed so they are supported to stay safe and their freedom is respected?
WELL-LED	W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed?

- 1.5 To meet the legal requirements of the regulated activities that Serendipity Healthcare Ltd is registered to provide:
 - The Health and Social Care (Safety and Quality) Act 2015
 - The Care Act 2014
 - Freedom of Information Act 2000
 - Human Rights Act 1998
 - Data Protection Act 2018

2. Scope

- 2.1 The following roles may be affected by this policy:
All staff
- 2.2 The following Service Users may be affected by this policy:
Service Users
- 2.3 The following stakeholders may be affected by this policy:
Family
Representatives
Commissioners

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Healthcare Professionals
Local Authority
NHS
Advocates

3. Objectives

- 3.1 To outline the principles related to confidentiality and to support staff in applying these principles.
- 3.2 To establish the approach of Serendipity Healthcare Ltd to ensuring the confidentiality of personally identifiable information.
- 3.3 To inform Service Users, their families, stakeholders, and carers about the confidentiality obligations of Serendipity Healthcare Ltd and how we intend to meet them.
- 3.4 Inform staff working for (or on behalf of) Serendipity Healthcare Ltd of their responsibilities with regards to confidentiality and personally identifiable information, and how Serendipity Healthcare Ltd will enable these to be met.

4. Policy

- 4.1 Serendipity Healthcare Ltd recognises that we have a duty of confidentiality to our Service Users and staff. We believe that respecting an individual's right to a private life, which includes confidentiality, is important in ensuring a trusting, caring environment where both Service Users and staff are confident that information about them will be protected safely and not shared inappropriately or unnecessarily.
It is the policy of Serendipity Healthcare Ltd that we will only share information that is in the best interest of the Service Users and with their consent. We aim to comply with the relevant legislation and include the 7 Caldicott principles.
- 4.2 Core Principles of Confidentiality
 - All staff will ensure that all Service User information remains confidential. Service Users have the right to expect that personal information held about them is not accessed, used, or disclosed improperly.
 - The same duty of confidentiality applies to personal information about staff, with the exception of names and job titles. Information about Directors, which is published and therefore is a matter of public record, is also excepted.
 - All staff have the individual responsibility for ensuring that they conform to the Caldicott principles, Data Protection Act (DPA) 2018 and Article 8 Human Rights Act (HRA) 1998
 - Staff must not inappropriately access, misuse or share any information or allow others to do so. Staff are personally liable for deliberate or reckless breaches of the DPA 2018 and may be liable to disciplinary action and/or prosecution.
 - Any personal information given or received in confidence for one purpose may not generally be used for a different purpose or passed to anyone else without the consent of the provider of the information.

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4.3 The Position of Serendipity Healthcare Ltd on Confidentiality

- We will share with Service Users, their families, and their Care Workers, as far as the law allows, the information they want or need to know about their health, care, and ongoing treatment sensitively and in a way they can understand.
- Confidential information will not be used for a different purpose or passed on to anyone else without the consent of the information provider.
- There may be occasions when it can be detrimental to the Service User or to another individual if this principle is strictly adhered to.
- There is a recognition that breaches of confidence are often unintentional. They are often caused by staff conversations being overheard, by files being left unattended, or by poor computer security. However, the consequences can be equally serious for all concerned.
- Serendipity Healthcare Ltd will ensure that personally identifiable information will always be held securely and, when used, treated with respect. This rule will apply regardless of where the information is held.
- We respect that a person's right to privacy and confidentiality continues after they have died.
- All information regarding the Service Users we support will be treated with respect and integrity.
- We will be transparent in our approach to ensure that anyone associated with Serendipity Healthcare Ltd (whether Service User or staff or visitor) is fully aware of how, what, when, who and why we share any information about them and source their agreement before doing so.

4.4 All relevant staff will be bound by their professional code of practice issued by their relevant licensing body, such as the General Medical Council, The Nursing and Midwifery Council and the Royal Pharmaceutical Society. Care Workers will follow the Skills for Care Code of Conduct for Healthcare Support Workers and Adult Social Care Workers in England.

4.5 All staff must sign a confidentiality agreement as part of their contract of employment (a template can be found within the forms section of this policy). The confidentiality agreement also extends to agency and contract workers.

4.6 Responsibilities - Registered Manager

- Ensuring that systems and processes are in place for the security of records, and they are reviewed to ensure that they remain fit for purpose
- Ensuring that all staff understand this policy at the start of employment and that its importance is reiterated during supervision or team meetings.
- Ensuring that staff have received the appropriate training and are competent in their role.
- Reviewing, monitoring, and auditing practice within Serendipity Healthcare Ltd to ensure that staff remain knowledgeable.
- Acting on any breaches in confidentiality in a timely manner and notifying the appropriate bodies
- Ensuring that confidentiality rules are never used as a barrier to sharing appropriate information and fulfilling Duty of Candour obligations

4.7 Responsibilities - All staff will ensure the following:

- All information that is received is effectively protected against improper disclosure when it is received, stored, transmitted, and disposed of

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- Confidential information is only accessed if it is appropriate to the job being undertaken.
- Every effort is made to ensure that Service Users understand how information about them will be used before they supply any confidential information.
- When Service Users give consent to disclosure of information about them, they understand what will be disclosed, the reasons for disclosure and the likely consequence/s
- Service Users understand when information about them is likely to be disclosed to others and that they have the opportunity to withhold their permission.
- If disclosing information outside the team that may have personal consequences for Service User, that consent is obtained from the Service User.
- If the Service User withholds consent, or if consent cannot be obtained for whatever reason, disclosures may be made only where:
 - They can be justified in the public interest (usually where disclosure is essential to protect the Service User or someone else from the risk of significant harm)
 - They are required by law or by order of a court.
- If required to disclose confidential information, staff will only release as much information as is necessary for the purpose.
- The person(s) to whom information is disclosed understands that it is given to them in confidence which they must respect.
- When disclosing confidential information, staff must be prepared to explain and justify the decision. Where there are doubts, they will discuss them with The Registered Manager
- Queries concerning this policy will be brought to the attention of the The Registered Manager
- During the induction period for new staff, they will be made aware of this policy and their individual responsibilities.

5. Procedure

- 5.1 Serendipity Healthcare Ltd will detail with transparency how confidentiality is managed with Service Users, employees and others at the earliest opportunity and seek their agreement, e.g., through existing systems such as recruitment and the pre-assessment process.

Staff should refer to the Fair Processing Notice Templates and the Fair Processing Notice Policy and Procedure for further information that details how information is processed within Serendipity Healthcare Ltd.

- 5.2 Sharing Information with Other Health and Social Care Professionals
Information sharing between partners directly involved in a Service User's Care, and for the purpose of providing that Care, is essential to good practice.

Consent from the Service User for information sharing must be recorded following a discussion with the Service User or, in the absence of capacity to consent, their designated other.

The principles of sharing information are:

- Only information that needs to be shared
- Only with those who have a clear need to know.
- There is a lawful basis for sharing information.

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5.3 General Principles of Confidentiality - Staff will:

- Understand and follow the Caldicott Principles as detailed within the Forms section of this policy.
- Be aware that the Data Protection Act is not a barrier to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately.
- Be open and honest with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared and will seek their agreement unless it is unsafe or inappropriate to do so.
- Seek advice from The Registered Manager, if they are in any doubt, without disclosing the identity of the person, where possible
- Share with consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. Staff may still share information without consent if, in their judgment, that lack of consent can be overridden in the public interest.
- Consider safety and wellbeing: Staff must base information sharing decisions on considerations of the safety and wellbeing of the person and others who may be affected by their actions.
- Necessary, proportionate, relevant, accurate, timely and secure: Ensure that the information shared is necessary for the purpose for which it is being shared, is shared only with those people who need to have it, is accurate and up to date, is shared in a timely fashion, and is shared securely.
- Staff must keep a record of any decision and the reasons for it (to include what has been shared, with whom and for what purpose), and for the decision not to share.

5.4 Maintaining Confidentiality.

- All information regarding the people we support will be treated with respect and integrity.
- In general, no information may be disclosed either verbally or in writing to other persons without the Service User's consent. This includes family, friends and private carers, and other professionals.
- If in doubt, you can consult the Line Manager or Registered Manager
- Conversations relating to confidential matters affecting Service Users must not take place anywhere they may be overheard by others, i.e., in public places - such as supermarkets, public transport, open plan areas of the office, during training or group supervision where other staff not involved in the Service User's care are present.
- Written records and correspondence must be always kept securely when not being used by a member of staff. Timesheets, rotas, etc. must not be left in an unattended vehicle.
- Rotas must not contain key safe or door entry codes with Service User's name and address.
- Staff must ensure their copy of the rota is confidentially destroyed. It must not be placed in household recycling.
- Staff must not disclose any information that is confidential or that, if it were made public, may lead to a breakdown in the trust and confidence that the Service User and their families have in Serendipity Healthcare Ltd

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- Staff must not pass on any information or make comment to the press or other media. Media enquiries should be referred to the person responsible for handling any media enquiries.

5.5 **Safeguarding, The Care Act and Confidentiality**

Where safeguarding issues arise and to fully understand what has gone wrong, Safeguarding Adult Boards may ask for information to be shared. Decisions about who needs to know and what needs to be known should be taken on a case-by-case basis, within locally agreed policies and the constraints of the legal framework. However:

- Staff must verify the identity of the person requesting the information whilst establishing if it can be anonymised (refer to 5.8)
- Information will only be shared on a 'need to know' basis when it is in the interests of the adult.
- Confidentiality must not be confused with secrecy.
- Informed consent should be obtained, but if this is not possible and other adults are at risk of abuse or neglect, it may be necessary to override the requirement.
- It is inappropriate for Serendipity Healthcare Ltd to give assurances of absolute confidentiality in cases where there are concerns about abuse, particularly in those situations when other adults may be at risk.

5.6 **Rights of All Service Users**

All Service Users may view personal information we hold about them. Local and health authorities are not required to give access to information that is 'hurtful' or 'that would breach the confidentiality of another Service User'. The policy at Serendipity Healthcare Ltd is to record information in a way that, as far as possible, avoids a need for this exclusion. If a Service User believes their right to confidentiality is either being breached or undermined, they must have access to the complaint's procedure at Serendipity Healthcare Ltd.

Staff must refer to the Subject Access Requests Policy and Procedure for further details.

5.7 **Rights of All Staff**

All staff may view personal information held by Serendipity Healthcare Ltd that relates to them, by applying in writing to their Line Manager or Registered Manager.

5.8 **Data Security and Quality**

- Any record that contains information about an individual must remain confidential unless it is in the public domain. Any records will be factual and will not include the personal opinions of the person writing the records. Staff should refer to the Record Keeping Policy and Procedure for further details.
- Reproduction of information relating to a Service User (e.g., photocopying documents) will only be done with the consent of the Service User
- Confidential information to be posted must be marked 'Private & Confidential, for attention of the addressee only', and sent recorded/special delivery.

Staff should refer to the guidance contained in the Forms section of this policy for best practice and requirements for data security. However, as a minimum:

- Information held within Serendipity Healthcare Ltd will not be shown to unauthorised individuals or be left where authorised personnel may access them. All records will be kept in a lockable cabinet in a lockable office, with restricted access.
- All written records should be kept securely and only disposed of by shredding, after appropriate timescales. Staff must take care when recording personal identifiable

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information into personal notebooks or paper during shift handover and ensure the safekeeping and destruction of the information.

- Written information also relates to key safe numbers and Staff Rotas. Staff must be only provided with key safe numbers if they are directly providing care for the Service User and staff must follow the key safe number policy. Key safe numbers must not be recorded on Service User records for use outside the office or on Rotas supplied to staff. Staff must ensure that if they record Service User information to support the delivery of care (e.g., a request to cover an unplanned absence) that the information is recorded safely and securely, and that the information is safely destroyed after use.
- Any rotas must be returned to the office for confidential disposal.
- Any employee who breaches this policy may be subject to disciplinary procedures.

5.9 Social Media

Staff are not permitted to discuss the people who use our services, other employees past or present, or Serendipity Healthcare Ltd on any social networking site, as this may breach confidentiality and bring Serendipity Healthcare Ltd into disrepute. Staff must also be aware that this applies to taking and posting photographs of Service Users.

5.10 Mental Capacity and Confidentiality

The Mental Capacity Act 2005 applies to adults without capacity, and further details about the disclosure of confidential information about a Service User lacking capacity can be found in the Mental Capacity Act Code of Practice.

5.11 Anonymisation and Pseudonymisation Considerations Anonymisation

Anonymised information (i.e. where personal information is removed and both the giver and the receiver are unable to identify the Service User) is not confidential and may be used outside of data protection legislation. However, staff should be aware that information which contains small numbers of person identifiable information may lead to identification. For this reason, all disclosure of anonymised information should be reviewed on a case-by-case basis. Serendipity Healthcare Ltd will seek to anonymise collective data about individuals within the service.

Pseudonymisation

Pseudonymisation is the practice of removing and replacing actual data with a coded reference (a 'key'). Serendipity Healthcare Ltd will consider this practice where the use of the data needs to relate to individual records, but also needs to retain security and privacy for that individual. There is a higher privacy risk and security risk of the key system as the data will not truly be anonymised. Personal data that has been pseudonymised can fall within the scope of data protection legislation, depending on how difficult it is to assign it to a particular individual.

Further information can be found within the ICO Anonymisation Code of Practice.

5.12 Serendipity Healthcare Ltd Confidentiality Suppliers

Staff must extend the principles of confidentiality when considering Serendipity Healthcare Ltd sensitive information and the protection of any commercial data.

Staff and/or external suppliers will ensure that information such as suppliers' prices, performance and costs are not disclosed to other suppliers or unauthorised persons. Serendipity Healthcare Ltd could consider requesting that suppliers sign a confidentiality agreement to protect the data of Serendipity Healthcare Ltd.

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If there are any queries about how to support commercially sensitive information, these should be discussed with The Registered Manager.

Meetings

Serendipity Healthcare Ltd has a right to have confidential meetings where information is discussed and then held securely and confidentially. Information held will be in line with the Freedom of Information Act (FOIA) 2000 and the Data Protection Act 2018.

Complaints and Investigations

Complaints and investigations are treated confidentially and remain so unless there is a legal requirement to release information.

Media

Staff must not pass on any information, or make comment, to the press or other media. Media enquiries should be referred to the person responsible for handling any media enquiries.

5.13 Confidentiality Breach

Unauthorised access, use or disclosure may be in breach of the DPA 2018, the Human Rights Act, and/or breach the policies of Serendipity Healthcare Ltd and may lead to disciplinary action.

Where there has been a breach in confidentiality, this will be recorded on an incident form at Serendipity Healthcare Ltd and reported to the Registered Manager.

Significant breaches will be reported to Paul Bradshaw so that reporting to the relevant regulatory, professional bodies and the ICO is considered.

Breaches will be monitored by The Registered Manager, reflected on with lessons learned and will form part of the quality assurance programme for Serendipity Healthcare Ltd.

Staff will refer people to the Complaints, Suggestions and Compliments Policy and Procedure at Serendipity Healthcare Ltd.

6. Definitions

6.1 Data Protection Act 2018

- The Data Protection Act 2018 is a United Kingdom Act of Parliament that updates data protection laws in the UK. It sits alongside the General Data Protection Regulation and implements the EU's Law Enforcement Directive

6.2 The Caldicott Report 1997

- Provides guidance to the NHS and adult social care records on the use and protection of personal confidential data and emphasises the need for controls over the availability of such information and access to it.
- It makes a series of recommendations which led to the requirement for all NHS organisations (and adult social care records from the year 2000) to appoint a Caldicott Guardian who is responsible for compliance with the 6 (original) Caldicott confidentiality principles.

6.3 Common Law Duty of Confidentiality

- Prohibits use and disclosure of information, provided in confidence unless there is a statutory requirement or court order to do so.

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- Such information may be disclosed only for purposes that the subject has been informed about and has consented to, provided also that there are no statutory restrictions on disclosure.
- This duty is not absolute but should only be overridden if the holder of the information can justify disclosure as being in the public interest, for example, to protect the vital interests of the data subjects or another person, or for the prevention or detection of a serious crime.

6.4 Safe Haven

- A Safe Haven is a term used to explain an agreed set of arrangements that are in place in an organisation to ensure that confidential identifiable information (e.g., patients and staff information) can be communicated safely and securely.
- It is a recognised phrase within the NHS but has relevant underlying principles for all community-based services.

6.5 Personal Information

- Personal information is information which can identify a person – in which the person is the focus of the information and which links that individual to details which would be regarded as private, e.g., name and private address, name, and home telephone number, etc.

6.6 Sensitive Personal Information

- Sensitive personal information is where the personal information contains details of that person's:
 - Health or physical condition
 - Sexual life
 - Ethnic origin
 - Religious beliefs
 - Political views
 - Criminal convictions

6.7 Business Sensitive Information

- Information that if disclosed could harm or damage the reputation or image of an organisation.

6.8 Public Interest

- Exceptional circumstances that justify overruling the right of an individual to confidentiality to serve a broader societal interest.
- Decisions about the public interest are complex and must take account of both the potential harm that disclosure may cause and the interest of society in the continued provision of confidential services.
- The Public Interest Disclosure Act (Whistleblowing) has more information about this.

Consistent Identifier

- The Health and Social Care (Safety and Quality) Act 2015 includes a requirement for health and adult social care organisations to use a consistent identifier (the NHS Number) for all data sharing.
- associated with or facilitating care for an individual.
- The NHS Number is the national, unique identifier that makes it possible to share patient and Service User information across the NHS and social care safely, efficiently and accurately.

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6.10 Confidentiality

- Confidentiality means that professionals should not tell other people personal things about a Service User unless the Service User says they can, or if it is necessary.

6.11 Statutory Duty to Disclose

- There are Acts of Parliament which require the production of confidential information.
- Prevention of Terrorism Acts
- Road Traffic Act
- Public Health Acts
- Police and Criminal Evidence Act 1984
- Misuse of Drugs Act 1971
- It is essential that there is good justification to disclose confidential information when relying upon an Act of Parliament. Public Health legislation requires the reporting of notifiable diseases.

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CR33 – Staff Confidentiality Agreement

This agreement is provided to clarify the responsibilities of those employed at Serendipity Healthcare Ltd in respect of maintaining confidential information gathered by Serendipity Healthcare Ltd in the course of its work.

Queries and questions relating to this duty should be addressed to either the:

- Registered Manager
- Data Protection Officer

All information given by Service Users to staff is given on the understanding that it will be used solely to providing them with Care. It is the duty of Serendipity Healthcare Ltd to ensure that the confidentiality of that information is maintained within the boundaries of the law and is not divulged without the consent of the Service User.

In the course of your work at Serendipity Healthcare Ltd, you will have access to person identifiable, confidential data concerning the medical or personal affairs of:

- Service Users
- Serendipity Healthcare Ltd team
- Associated health and care professionals

Unless acting on Serendipity Healthcare Ltd policy, or following the direct instructions of Serendipity Healthcare Ltd, or Registered Manager such information must not be divulged or discussed, except in the performance of your normal duties. Breach of confidence, including the improper passing of computer data, may result in disciplinary action, your dismissal, and civil action against you for damages.

You must ensure that all records, including computer screens and computer-generated records or paper records of staff or Service User data are never left where unauthorised persons can view them.

Computer screens must always be cleared when left unattended and you must ensure you log out of computer systems, removing your password. All passwords to the systems at Serendipity Healthcare Ltd must be kept confidential.

No unauthorised use of the Internet or email is allowed.

No contact is made with service users, their families or advocates through any Social Media platform.

Personal phone numbers must not be shared with service users or their families or advocates.

Information concerning Service Users or team members is strictly confidential and must not be disclosed to unauthorised persons. This obligation continues without end, during and after your employment at Serendipity Healthcare Ltd.

Disclosures of confidential information or disclosures of any data of a personal nature can result in prosecution for an offence under the Data Protection Act 2018.

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I have read, understand and agree to the terms and conditions set out above:

Signature:

Date:

Name:

Last Reviewed:
6th January 2021