

Data Protection Policy Statement of Commitment

Play and Sensory Stimulation Therapy (PASST) is in receipt of personal data for many individual clients. The manner in which they process this data, from obtaining it to disposal, should conform to the requirements of the Data Protection Act as well as this policy document.

PASST will regularly deal with classes of data that the Data Protection Act defines as sensitive personal data, including data relating to the physical or mental health of a data subject. There are particular restrictions on the processing of such data.

Items of particular relevance from the 1998 Data Protection Act

Principle 1 Fair and lawful processing Schedule

3 Conditions for the processing of sensitive data

Key Issues

1. Counsellors and therapists should inform clients why personal data is processed (see Guidelines for Clients). Explicit consent for the processing of sensitive data should be obtained from parents (in the case of primary age children) or from older children themselves, ideally in writing. Acceptance by the client of the service's record-keeping practices should be part of their contract with the Service (Principle 1 & Schedule 3).
2. Counsellors should be aware that clients will normally have a right of access to personal data including counselling and therapy service records. Counsellors and therapists should offer to discuss any personal data within the records that may be unclear with that client (see also 'Risk Registers' below). Personal data provided by another individual who can be identified from that information ("third party information") should be withheld until the consent of the third party has been obtained. If this is not possible, or consent is refused, information may still be disclosed if this is "reasonable in all the circumstances".
3. Clients should be informed under what circumstances personal data might be disclosed (see Guidelines for Clients).
4. PASST will take all reasonable steps to ensure that counsellors, therapists, administrative staff and trainees respect the need for confidentiality regarding any information obtained.
5. Young people may be referred to the service by a school teacher. PASST may be asked to disclose to such a person whether a student has actually attended the service. In these circumstances such a disclosure would be permissible if it was believed to be in the legitimate interests of the school (and

the student), as such information is not defined in the Act as 'sensitive personal data'. However, if a client has attended the service they should be informed of any such possible disclosures and, where practicable, be allowed to opt-out of such procedures.

Sensitive personal data about a client should only be disclosed in specific circumstances (Schedule 3):

- i) Where the counsellor or therapist has the explicit consent of the client to disclose the data;
- ii) Where the counsellor or therapist believes that the client or a third party is in danger of serious harm.

*The consent of the client should **not** be sought where it is thought that informing the client of the disclosure would increase the level of risk to the client or third party.*

- iii) Where the disclosure is required 'for the purpose of any legal proceedings'.

4. PASST should ensure all records are kept securely and remain confidential. The level of security required for personal data should be commensurate with the sensitivity of the data and the risk of damage if data were disclosed. In the case of counselling and therapy security includes:

- i) All manual files locked away.
- ii) Access to computer databases being password protected and data anonymised
- iii) A back-up of the computer database being kept, preferably in a separate locked cabinet in a separate building (in case of disaster) or using an encrypted on-line provider.
- iv) Secure disposal of personal data that is no longer required. Manual data should be disposed of by shredding; computer hard drives should be 'over-written' by a professional provider prior to disposal

5. PASST may keep risk registers of various types, including:

- Names of individuals who a counsellor or therapist believes may be at special risk of self-harm, and who will require careful management if seen on a drop-in basis or if their counsellor or therapist has to cancel an appointment;
- Names of individuals who may be violent, so that counsellors or therapists can check before they arrange one-to-one meetings.

Access by counsellors or play therapists to such risk registers should be on a need to know basis.

** In the event of a subject access request a client should be informed about their inclusion on a risk register unless it is believed that such a disclosure would put the health & safety of the data subject, or third party (including counsellors or therapists) at risk (Section 31(2)(e)).

PASST require that parental consent is obtained for primary age children (to year 6). For older children self-referral is appropriate in the context of the school making all parents aware of the availability of a counselling service and their right to withdraw their child for it.

FREQUENTLY ASKED QUESTIONS

Q.1. Can counselling or therapy be given without explicit consent for the service to retain sensitive personal data?

A client may arrive in a state of distress/desperation and not be prepared to sign the Data Protection statement. A client may also be simply opposed to signing any document relating to their attendance at a counselling service.

The Act states that explicit consent must be obtained when processing sensitive data unless specific exemptions apply (Schedule 3). The Statutory Instrument 417 provides additional exemptions for processing of sensitive data without explicit consent, including for the provision of counselling or play therapy, but ONLY where this is “in the substantial public interest” .

The view of the OIC is that situations of “substantial public interest” will apply to scenarios such as those following national disasters (e.g. rail crash) not for ‘routine’ counselling.

In the situation where a client is not prepared to give ‘written’ consent it would be sufficient for consent to be explicitly indicated by the counsellor or play therapist recording that the client has been informed of all relevant information about the proposed processing (as indicated in Guidelines to Clients).

Where the client does not want any processing of sensitive data to take place three main options are apparent:

- i) Explain that the Service can’t be provided without consent as note taking is a fundamental part of the Service *.
- ii) Offer the client one initial session and at the end of this explain why the service needs consent. If consent is still refused no further sessions should be offered *. No contract should be drawn up with the client during the initial session. A record that the client has attended may be retained without explicit consent as this is not sensitive data.
- iii) If the contract for the service with the school allows, the client could be asked to sign a suitable disclaimer regarding liability for any advice given. (An ‘anonymous’ client might not even want to do this but the Service must presumably have to verify the client as member of the institution). This is suggested to avoid a situation where the client subsequently sues the Counselling or Play Therapy Service and no records are available for the Service to defend themselves against accusations. This option should not be carried out regularly and only after my consultation.

NB Instances such as (ii) and (iii) relate more to the ethics of the individual Counselling or Play Therapy Service than Data Protection law as sensitive personal data is not being processed.

* The client should be immediately referred to other counselling services, e.g. Samaritans, that do not require personal data and therefore do not require explicit consent.

Q.2. When is it best to obtain consent from the client and provide guidance regarding the data protection policies of the counselling service?

Suggested best practice is that the consent form is signed prior to the first counselling session. In exceptional circumstances (see above) signing of the consent form, or recording of consent by the counsellor, could be discussed at the end of the first session.

A copy of the consent form should be given to the client when explicit consent is requested. This can then be read either before signing, or later at the client's discretion. Where consent is to be recorded by the counsellor or play therapist they must explicitly inform the client of the data protection guidelines.

Q.3. Under what circumstances may personal 'process' notes be kept by counsellors or play therapists?

Many counsellors or play therapists currently keep notes on counselling/play therapy sessions relating to their views on how the session has progressed, their perception of the client and his/her problems etc. Many regard these as essential to their work. They are used to help keep track of how sessions are developing and as a precise reminder of the relationship established with the client (which is often difficult with high workloads).

Personal process notes are often highly subjective and open to different interpretations. A subject access request would include access to such notes* which:

- i) many counsellors or play therapists would object to as infringing their privacy
- ii) would be more likely to result in litigation against the service
- iii) if used on behalf of the client in court may not provide clear objective support for the client.

* Under Data Protection law a counsellor or therapist cannot claim confidentiality of personal notes as a right (though this could be argued in court).

Practical suggestions to deal with this issue are either

- that personal process notes should never be kept or
- If it is deemed essential to keep personal notes these should be: as objective as possible; not retained when any perceived possibility of litigation exists; and removed routinely following the final counselling session with the client (or annually).

Q.4. When can a counselling or therapy service release information to appeals / disciplinary committees?

Counselling services may be asked to provide evidence of a client's physical or mental problems for exam appeals, for example.

Though the disclosure of such information might appear to be to the obvious benefit of the client this



should never be done without the client's explicit consent for each separate appeal or hearing. The only occasions in which explicit consent is not required would be if exceptional circumstances apply. For example, if the counsellor or therapist believes that the client is in danger of serious harm if evidence is not supplied.

Data Protection Guidelines, which can be provided to my Clients

What information is held and why?

Play and Sensory Stimulation Therapy maintain a record of client attendance and keep notes after each session in order to carry out a professional effective service. A Strengths and Difficulties Questionnaire is completed for each client but all processed data is anonymised.

General statistics are kept about numbers attending the Service and how often certain problems occur. These statistics do not contain information from which an individual can be identified and are solely used to monitor and improve the effectiveness of the Service.

Security

Records are retained securely for 5 years (from the end of the academic year of the client's last appointment) and then disposed of confidentially.

Access

Under the Data Protection Act (1998) you have a right of access to notes held in your file containing personal data.

Confidentiality

The Counselling /Play Therapy Service adheres to the strictest standards of confidentiality. I will not pass on personal information about clients (including information on attendance) to anyone outside the Service (including teaching staff) subject to the following exceptions:

1. Where the member of staff has the express consent of the client to disclose the information.
2. Where the disclosure is required for the purpose of any legal proceedings.
3. Where the member of staff believes the client or a third party is in serious danger.

In circumstances 2 and 3 the counsellor will seek to obtain consent to disclose information from the client, if at all possible. If there is no indication that this is likely to be given happen, and danger is acute, the counsellor may pass on the information directly.

In line with their professional requirements counsellors/ therapists may discuss counselling sessions with other counsellors or a supervisor external to the service. In these processes the identity of the client is not revealed.

If you have any queries or concerns about our data protection policy, please feel free to speak to your counsellor/therapist.

The Data Protection Act (1998) requires us to obtain your consent for this record keeping.

It is our intention to produce a single sheet which combines the main points of these data protection guidelines with the existing client consent form