Standard Operating Protocol

1. *Purpose*

The purpose of this Standard Operating Protocol is to outline the process and standards for how we work with young people in relation to confidentiality, competence to consent to treatment and how we share information.

2. *Scope*

Your Welcome (Department of Health, 2007) points out that 'the overriding concern expressed by young people is over the confidentiality of any new service' and this view is consistent with similar surveys of young people in other areas.

ReFRESH recognises that a trusting relationship based on a high degree of confidentiality is very important when working with young people who have drug or alcohol related problems as this is a means by which a strong positive influence can be exerted. However for professional and legal reasons it is impossible to offer absolute confidentiality and the boundaries of agency confidentiality must be clear to young people, parents or carers and other agencies.

3. *Responsibilities*

All staff undertaking direct work with children and young people will be required to conduct an assessment of need as part of the planning and delivery of agreed packages of care. Before assessment the confidentiality and competence to consent needs to be considered and discussed with the young person.

Staff will undertake training to ensure they are competent to conduct individual assessment and address confidentiality and consent before commencing the assessment process.

Additional support, supervision and observed practice in this area will be provided by a practitioner's line manager.

4. Procedure

Confidentiality for young people requesting services

A young person approaching ReFRESH for 'advice and information' will be offered this on a confidential basis and ReFRESH will not share information without his / her informed consent, with the following exceptions:

- If social services request relevant information as part of an enquiry under S.47 of the Children Act 1989.
- If ReFRESH staff are concerned that the young person may be suffering, or is likely to suffer, significant harm.
- If ReFRESH staff are concerned that any other adult, or in particular young person or child, may suffer serious harm.
- If ordered to do so by the courts, or by the police in relation to the Prevention of Terrorism Act, or the tracing of proceeds from drug trafficking offences.

Competence to consent to treatment

Interventions which go beyond straightforward advice and information raise further legal issues regarding consent to treatment in addition to the determined confidentiality issues outlined above.

By law, parental consent is required for young people under 16 years to receive treatment unless the young person is determined to be 'competent'.

ReFRESH considers it to be good practice to involve parents or carers in the treatment of their children and the agency will usually require a parent's written consent before any drug / alcohol intervention is offered to a young person under 16 years. All young people under 19 years who request treatment will be advised and encouraged to involve parents themselves unless to do so would place them at risk e.g. where there is evidence that disclosure of drug use would result in a parent becoming violent.

Whilst the parent may consent to treatment, this does not necessarily entitle him or her to know the content of that treatment. Thus, a parent may consent to a child receiving

treatment for drug misuse, but need not be informed of what the child said in the treatment session unless the child explicitly consents.

With regard to interventions involving prescribing or needle exchange and associated health and harm reduction advice ReFRESH will be producing additional guidelines relating to assessment for and provision of these particular services, in line with the procedures outlined in this document and in consultation with relevant bodies including the Local Safeguarding Children's Board.

Factors and considerations in assessing competence

Competency will need to be determined individually for each and every young person. The following factors will be considered when assessing the competence of a young person to consent to treatment:

- The maturity of the young person. The younger the person, the less likely it is that they will be competent. Whilst each young person will need to be assessed individually, it is unlikely that those under the age of 13 would be deemed competent to consent to their treatment.
- The understanding the young person has of his or her actions.
- The understanding the young person has of the consequences of treatment or the capacity to deal with these without the support of his or her parents.
- The extent to which other factors which may affect the level of understanding are present, such as intoxication through drugs or alcohol, or learning disabilities.
- The nature and level of treatment. The more invasive the level of intervention proposed and the more problematic the substance use, the less likely it is that the young person will be found competent. Thus, competence for psychosocial interventions is likely to be of a lesser standard than that required for invasive medical treatment.
- A young person's competence may fluctuate and should be under constant review

Fraser Guidelines (Mental Health Act 1983 Code of Practice, 1999)

Drawing on the Fraser Guidelines, the following five preconditions must be adhered to when assessing whether a young person is competent to give or withhold consent to the provision of confidential medical advice and treatment:

- That the young person is able to understand the service offered and has the maturity to understand what is involved.

- That their physical and/or mental health will suffer if they do not receive treatment;
- That the young person's best interests require the provision of treatment without parental consent.
- That the young person will continue to put themselves at risk of harm if they do not receive treatment.
- That the young person cannot be persuaded to inform the parental responsibility holder(s), nor allow the staff to inform them.

Withdrawal of consent to treatment

- If a young person has been found competent, and has given consent to treatment, he or she can withdraw that consent at any time.
- If a parent consents to the young person being treated by the service, the parent may withdraw that consent at anytime, even if the parent has signed an agreement with the service for the young person to complete a course of treatment.
- Once consent has been withdrawn, treatment may not continue until such time as permission is obtained from the Courts or the young person is deemed competent and gives consent.

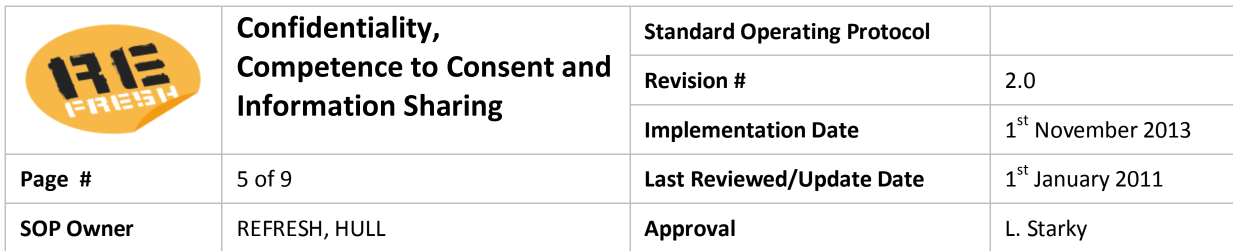
Parental responsibility

The law is clear on who has parental responsibility:

- A mother automatically has parental responsibility for her child from birth.

- In England and Wales, if the parents of a child are married to each other at the time of the birth, or if they have jointly adopted a child, then they both have parental responsibility. Parents do not lose parental responsibility if they divorce, and this applies to both the resident and the non-resident parent. This is not automatically the case for unmarried parents. According to current law, a mother always has parental responsibility for her child. A father, however, has this responsibility only if he is married to the mother when the child is born or has acquired legal responsibility for his child through one of these three routes:

- (from 1 December 2003) by jointly registering the birth of the child with the mother
- by a parental responsibility agreement with the mother
- by a parental responsibility order, made by a court



Living with the mother, even for a long time, does not give a father parental responsibility and if the parents are not married, parental responsibility does not always pass to the natural father if the mother dies.
All parents (including adoptive parents) have a legal duty to financially support their child, whether they have parental responsibility or not.

- Anyone who has a residence order in relation to the young person, or a legal guardian appointed under Section 5 of the Children Act 1989.
- The local authority, where the young person is the subject of a care order (but not where the young person is simply accommodated by the local authority).
- It is only necessary to obtain the consent of one person with parental responsibility to commence treatment with a young person where parental consent is required. There is no need to have the consent of every person who holds parental responsibility.
- One parental responsibility holder cannot veto the consent of another parental responsibility holder. The objecting parental responsibility holder could, however, seek a court order to prevent the treatment.

'Looked after' young people

- Where a young person is placed with foster parents, and the young person is not competent to consent to treatment, consent will need to be given by the parent or the local authority, depending on the legal status of the young person.
- Where the young person is accommodated under s.20 Children Act 1989 and is not competent to consent on his or her own behalf, the local authority must obtain consent from the parents, who retain parental responsibility. Where the parents refuse their consent for what the local authority regards as necessary treatment, the local authority may have to obtain an appropriate order from the Court to deal with this issue.
- The Children Act 1989 s.33(3) (b) permits local authorities to restrict a parent's exercise of parental responsibility where it is necessary to do so in order to safeguard or promote the young person's welfare. In exceptional cases, the local authority may seek a Court order for the treatment.

Ten key policy principles (SCODA and The Children's Legal Centre, 1999)

1. A child or young person is not an adult.
2. The overall welfare of the individual child or young person is of paramount importance.

3. The views of the young person are of central importance, and should always be sought and be considered.
4. Services need to respect parental responsibility when working with a young person.
5. Services should recognise the role of, and co-operate with, the local authority in carrying out its responsibilities towards children and young people.
6. A holistic approach is vital at all levels, as young people's problems tend to cross professional boundaries.
7. Service must be young people centered.
8. A comprehensive range of services should be provided.
9. Services must be competent to respond to the needs of the young person.
10. Services should aim to operate, in all cases, according to the principles of good practice.

Factors to consider for disclosure

The following four parameters should be used as a guide by workers/managers when considering whether confidential information given by a young person should be disclosed to the local children's social care duty team or the police.

The age and the maturity of the child: As a general rule, the younger the child, the more problematic it is to guarantee or maintain confidentiality. There is no age limit in law below which a child cannot enter into a confidential relationship, but given the problems of establishing competence to consent to treatment, it is difficult to envisage children being offered confidential treatment for drug misuse, without parental consent or parental involvement, much under the age of 13. Indeed, it is possible that a failure to inform parents that a young child is misusing drugs could lead to legal negligence action if the drug service or agency failed to take sufficient action to protect the child from harm as a result of that drug misuse.

The degree of seriousness of drug use: The more serious the drug use, the more likely it is that disclosure of confidential information to other agencies (NSPCC, Social Services, Police) will have to be considered. In deciding whether to disclose, the drug service must take into account: the patterns and levels of drug taking; the risks of morbidity; mortality; and other risks such as involvement in crime and other behaviour linked with the substance misuse. The supply source of the child's drugs may also be important, particularly if the child is 'at risk' of exploitation or coercion.

Whether harm or risk is continuing or increasing: Harm from drug taking needs to be assessed with consideration of past, present and potential future behaviour. If there is

a clear risk to the child arising from present behaviour or evidence of an escalation of risk to an unacceptable level, it is important that a service takes steps to ensure the future safety of the child.

General context in which drug use is set: If a child or young person has multiple problems, it is likely that other agencies or professionals will need to be involved to resolve these problems or reduce the child's vulnerability to risk of harm. Examples would be: a child who reveals abuse within their home or residential setting; the child who has fallen out with his or her parents and is homeless; the child who has absconded from care. In such cases, the child or young person needs to be encouraged to involve other agencies. ReFRESH will need to assess the child's circumstances and determine whether to disclose confidential information against the child's wishes.

Where there are concerns that a child or young person is 'suffering, or at risk of suffering, significant harm', and the professional or drug service decides that it is in the interests of the child's safety and welfare that there be disclosure of confidential information to Social Care Team or to the Police, the child or young person's consent should first be sought to the disclosure. The child or young person should also, where possible, be involved in the process of the referral. Where that consent is not given, the child or young person should be informed that the professional or ReFRESH intends to disclose confidential information, and given the reason for this decision. He or she should also be informed of the likely outcome of the information being passed on to another service (see safeguarding procedures and guidance for further information).

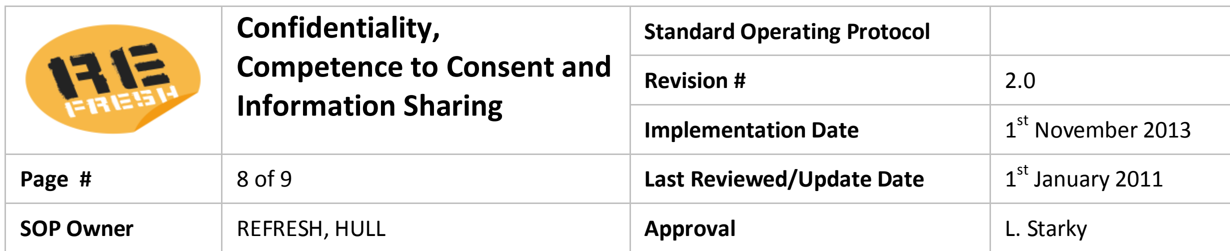
Information Sharing Policy

This policy should be read in conjunction with the GENERAL PROTOCOL FOR SHARING INFORMATION BETWEEN AGENCIES IN KINGSTON UPON HULL AND THE EAST RIDING OF YORKSHIRE (2008). This document is the information sharing protocol for public agencies working in Kingston upon Hull and the East Riding of Yorkshire. It provides guidance for sharing personalised information between these agencies.

The need to know principle

It is recommended that information sharing policies distinguish between different types of information sharing.

Information shared for the purposes of monitoring evaluation and research: the use of statistics and characteristics will be shared and stored in anonymous form to protect the identity of young people. Information shared in this way which discloses the identity of a



service user without his or her consent would be ***an unwarranted breach of confidentiality.***

Information shared with parents for onward referral and/or within joint case work arrangements: If services need to work in partnership with parents and other agencies to meet the best interests of a child or young person, information sharing may be necessary. This can be done by encouraging the young person and parent/carer to give their consent to disclosure, unless there is a court order or a child protection imperative. In cases where young people are undergoing interventions as a result of a Court order or sentence, clear agreement must be reached at the outset on what information will have to be shared in order to monitor progress, and this should be explained clearly to the child or young person.

Information that must be shared in order to protect a child: Practitioners who have concerns that a child or young person is 'suffering, or at risk of suffering, significant harm', must be supported in taking appropriated action to protect them, through agreed criteria and protocols, regardless of the young person's level of competence to consent to treatment and/or parental involvement. The young person's consent to, and involvement in, disclosure is still preferable, and any objections they have to disclosure should be seriously considered, but the authority, nevertheless, rests with responsible adults and services to assess the best course of action.

Working with young people referred through the Hull Youth Justice Service

Young people under 19 referred to ReFRESH under court imposed conditions will have the same fundamental rights to confidentiality as any other young person. However, in order that the young person can demonstrate that they are meeting any imposed treatment conditions, they will be advised by either HYJS or ReFRESH that ReFRESH may be required to release information regarding:

- Any ReFRESH programme they have been assessed as appropriate to engage in (e.g. 6 weekly group sessions, followed by 6 weekly relapse prevention sessions)
- Their attendance to sessions.
- Their general progress (e.g. engaging well with relapse prevention).
- Plans for discharge / follow up.

In order to ensure the effectiveness of psychosocial interventions it is usually necessary to treat information shared in sessions as confidential to ReFRESH. However, we will make it clear to all young people that ReFRESH can not maintain confidentiality if we

become concerned that the young person or anybody else is at risk of serious harm, in which case the procedures outlined in the ReFRESH Safeguarding policy will be followed.

5. References

This SOP is supported by the following guidance:

- Department of Health (2011b) *You're Welcome quality criteria for young people friendly health services-2011 edition*. Available at www.dh.gov.uk
- Department for Education and Skills (2009) *Common Assessment Framework for Children & Young People: A Practitioners Guide.* London: DfES
- Department of Health, Department for Education and Employment and Home Office (2000). *Framework for Assessment for Children in Need and Their Families.* London: DH
- Home Office (2010) *Drug strategy 2010 - Reducing demand, restricting supply, building recovery: supporting people to live a drug free life*. Available at www.homeoffice.gov.uk/drugs/drug-strategy-2010/
- NHS National Treatment Agency for Substance Misuse (2007) *Assessing young people for substance misuse*. Available at www.nta.nhs.uk

6. SOP documentation

Under 16 Form

Support Agreement