SERVICE USER CONFIDENTIALITY AND INFORMATION SHARING

1.0 POLICY

1.1 It is the policy of Livingstone House that information about Service Users is held under a legal and ethical obligation of confidentiality. Information provided in confidence or information that could identify a Service User will not be released without the Service User's consent, unless, in certain circumstances, this is judged by a multi-professional team to be in the Service User's best interests or is required by law.

2.0 RESPONSIBILITIES

2.1 **Home Manager** is responsible for implementing this policy within Livingstone House. The Home Manager is also responsible for ensuring that staff receive training on the importance of confidentiality.

2.2 **All Staff** are responsible for following this policy and protecting Service User Information, in whatever format, at all times.

3.0 BACKGROUND INFORMATION

3.l Confidentiality is the central trust between a Service User and Livingstone House, enabling an open and honest relationship between the Service User and the drug professional. However, information sharing is also central to providing a Service User with a seamless integrated service involving other services, to best meet their needs and to reduce the risk of harm to self and others.

3.2 Information needs to be shared between agencies about Service Users who are in contact with multiple agencies and those whose care is transferred from one agency to another. Models of Care for Treatment of Adult Drug Misusers : Part 2 (NTA 2002) sets out a national framework for the commissioning of treatment for drug misusers in England. It outlines the importance of information sharing to achieve seamless provision of care for the Service User, providing an integrated care pathway across drug treatment providers. Livingstone House finds a balance between the Service Users right to confidentiality and the importance of information sharing.

3.3 No drug treatment service can offer absolute confidentiality. All Service Users must understand when information will be kept in confidence, when it will be shared with other services involved in the care and in what circumstances confidentiality will be breached.

3.4 During the assessment process at Livingstone House, **all** Service Users will have a PAN assessment. Contained within this document is a clear and concise Sharing of Information and Confidentiality Form which **must** be discussed with the Service User and also signed. It highlights what information will be shared, with which agency and for what reasons. This has a valid time scale attached to it.

3.5 The Named Nurse/Drug Support Worker will take time to explain the Information Sharing Procedure and Confidentiality. Section 3.6 is written to give guidance to Livingstone House staff around confidentiality.

3.6 **Confidentiality and the Law**

3.6.1 English common law recognises that the concept of a confidential relationship and the duty of confidence. The Data Protection Act 1998 and Human Rights Act 1998 have introduced enforceable rights for service users about how the information they provide is used. The Data Protection Act has restrictions on storing personal data in all formats, written and electronic. The Human Rights Act emphasises respect for private life and strengthens the hand of those advocating increased privacy for the individual. Due to these Acts and the duty of confidentiality, there is a potential conflict between protecting the privacy and confidentiality of individuals, and protecting the public and a duty of care to the Service User.

3.6.2 **Breaches**

Confidentiality can be breached :

- To protect children at risk of significant harm as defined by the Children Act 1989
- To protect the public from acts of terrorism as defined in the Prevention of Terrorism Act 1971
- As a duty to the Courts
- Under the Drug Trafficking Offences Act 1986
- To prevent or detect a crime. Section 115 of the Crime and Disorder Act 1998 gives public bodies the power, but not a duty, to disclose information for the prevention or detection of crime.
- To ensure the service provides a duty of care in a life threatening situation (e.g. serious illness or injury, suicide and self harming behaviour). This includes when a Service User continues to drive against medical advice, when unfit to do so. In such circumstances relevant information should be disclosed to the medical advisor of the Driver and Vehicle Licensing Agency (DVLA) as soon as possible.
- To protect the service provider in a life threatening situation (e.g. calls to police regarding a violent service user). The Department of Health has published guidance on the issue of violence against staff, available at www.doh.gov.uk/violencetaskforce

3.6.3 A decision to disclose confidential information without the consent of the service user should not be made lightly and only after consultation between Livingstone House staff and the Home Director. Every effort should be made to discuss the situation with the service user, encouraging the service user to contact the relevant authorities themselves, unless this would prejudice the outcome of any investigation or criminal proceedings. All decisions should be recorded in the service user's case notes.

3.6.4 There is no legal obligation to breach confidentiality in order to protect third parties or when a crime has been committed, unless and until instructed to do so by a court. However, Livingstone House may decide to disclose confidential information about a service user in the event of serious offences or risk to public. Livingstone House will need to be clear about its attitude to illegal activities and it is good practice to ensure that this discussion is clearly documented with a clearly documented rationale for breaching or choosing not to breach a service users confidentiality.

3.6.5 Section 9 of the Police and Criminal Evidence Act 1984 allows for special treatment of information which is considered to be particularly sensitive (known as "excluded material") and this information does not need to be disclosed. This applies to material that arises in the course of a confidential, professional relationship related to an individual's physical or mental health, spiritual or welfare counselling or assistance

3.6.6 **Confidentiality and potentially violent or abusive service users**

3.6.7 With regard to potentially violent or abusive service users, there should be no ethical objection to recording factual information about the need for particular precautions in a service user's records, care plans and other information systems. It is essential that information is transmitted effectively between organisations. The Department of Health suggests a code or practice for the exchange of information when dealing with potentially violent service users which Livingstone House have adopted. It includes :

- Agreements in writing should be prepared between partner agencies.
- Where information about a service user is passed between agencies :

  a) information should always be in writing except in an emergency, when the exact nature of the information divulged should be recorded in writing by the service as soon as possible.
  b) two workers should always sign such written information, one of whom should be a manager.
  c) the service user should always be shown or have read out such information before sending, and have the right to add their comments.
  d) the service user should always receive a written copy of the information passed between agencies, including the note of any verbal information

3.6.8 Exchanges of information in violent and abusive circumstances do not infringe data protection legislation. Section 115 of the Crime and Disorder Act 1998 provides an explicit power, where none previously existed, for people to disclose information to a number of agencies if the disclosure is necessary or expedient for any of the purposes of the Act (DOH 2001b).

3.7 Consent

3.7.1 Consent is an agreement to an action based on the knowledge of what the action involves and its likely consequences. To be valid, consent should be informed and freely given. The fundamental principle governing the use of information that individuals provide in confidence to Livingstone House should be that of **explicit informed consent**, as information is likely to be of a sensitive nature (e.g. health issues), as defined by the Data Protection Act 1998.

3.7.2 Explicit informed consent means that the service user should understand the nature and extent of the disclosure that is to be made, who is likely to receive the information and how it may be used. A general release form, which gives permission for the release of "any relevant information", is not likely to be consistent with the principles of explicit consent. At Livingstone House a Consent and Information Sharing Consent form is contained within the PAN assessment documentation and time is spent going through this with the service user.

3.7.3 Consent does not need to be written, though a signed consent form is good practice. Informed consent does not last indefinitely. Service Users can withdraw consent at any time and should periodically be given the opportunity to do so.

3.7.4 Where an individual is or may be incapable of making an informed decision about disclosure, Livingstone House must make a judgement about how to act in the service user's best interests. Any exchange in the circumstances must be strictly according to the need to know principle.

3.8 Employment Practice at Livingstone House

3.8.1 All Livingstone House staff must understand and accept the principles of confidentiality and receive appropriate training. A "duty of confidence" requirement is included in employment contracts and staff are required to sign a Confidentiality Agreement on commencement. This requires Livingstone House staff to comply with the service's confidentiality policy and not disclose confidential information about the service, staff, volunteers, management committee and service users without permission. Staff should be aware of the possibly severe consequences of breaching confidentiality without proper authority and that they are liable to disciplinary action.

3.9 Children and young people

3.9.1 Livingstone House needs to be aware of the issues concerning children and young people when working with pregnant service users, drug misusing parents or individuals who may commit offences against children.

3.9.2 Under the Children Act 1989 the interest of the child is always paramount, overriding any other public interest consideration. Livingstone House have a duty to assist the local authority social services in child protection enquiries,

but voluntary organisations do not. However, government guidance encourages passing confidential information, without the individual's consent if necessary, if the child (under 18 years) is considered to be "suffering, or at risk of suffering, significant harm."

3.9.3 Where there are concerns that a child or young person is "suffering from significant harm" and Livingstone House decides that confidentiality must be breached, consent from the service user should be sought and if possible they should be involved in the referral process. Consent should not be sought where there is further risk of harm to the child or young adult where this might jeopardise any subsequent investigation.

4.0 Confidentiality and Quality

4.1 Concerns about organisations' confidentiality practices were brought to light by the Caldicott Committee report in 1997. Owing to increasing concern about the ways in which patient information was used in the NHS in England and Wales, the Chief Medical Officer of England commissioned the Caldicott Committee to write a report on patient identifiable information.

4.1.1 Within the NHS, the report found that there was little awareness of requirements around confidentiality and that practice was generally poor. Awareness has improved with the introduction of new legislation and work centred around the Caldicott recommendations has begun to raise standards.

4.1.2 Livingstone House strives to adhere to the standards on confidentiality in *Quality in alcohol and drug services: organisation standards (QuADS)*(DrugSCope/Alcohol Concern, 1999). These standards are part of the nationally accepted quality standards for drug treatment services and they are recommended by government departments and the National Treatment Agency.

5.0 Information Sharing

5.1 There are a number of people who may ask Livingstone House for information about a Service User. These include GPs, social service, the probation service, courts, employers and family/friends. It is important that Livingstone House have agreed policies in information sharing, which encourage effective multi-agency working within defined and clearly understood boundaries.

5.2 *Data Protection Act 1998: guidance to social services* (Department of Health, 2000) states that procedures for disclosure should be simple, unambiguous and specify :

- Post holders who are to deal with requests for disclosure
- Procedures to be followed and time limits
- Safeguards to ensure that information will only be used for the purpose for which it was obtained.

5.3 Service Users with complex needs may have a care plan involving several relevant services and information sharing will be essential to provide a co-ordinated and seamless treatment process, an integrated care pathway. Confidential information should only be divulged with the service users informed consent. This includes any enquiries from a partner, relative or friend of the service user.

5.4 Information can be shared for monitoring and research purposes, as long as the service user cannot be identified from the data or their explicit consent is obtained.

5.5 If asked to provide confidential information about service users to partnership organisations, employers, friends or family, Livingstone House should :

- Seek the service users informed consent to disclose
- Anonymise date where identifiable data will serve the purpose
- Keep disclosures to the minimum necessary. Information should be shared on a need to know basis.
- Always be prepared to justify a decision to breach confidentiality.

5.6 Once consent has been gained, it is good practice to check the identity of phone callers before giving confidential information. The can be achieved by phoning the caller back. Confidential information should only be shared in secure surroundings (e.g. where the worker cannot be overheard).

5.7 General principles of information sharing are outlined below :

- Information should only be used for the purposes for which it was given.
- Information about a service user should normally be shared only with the consent of that person.
- A service user may refuse to give permission to share personal information. In exceptional cases this information can be shared, if there are significant risks posed to the service user or others in not sharing this information. (See Clause 3.6.2, Breaches)
- Information should normally only be shared on a need to know basis. This means only sharing the minimum information necessary to serve the best interests of the service user.
- Service Users and carers should be advised why and with whom information concerning them will be shared, to enable informed consent to be obtained.
- All confidential information should be safeguarded against unauthorised disclosure (e.g. having passwords on computers that are changed regularly and procedures to check the identity of telephone callers).

5.8 **Specific Groups**

5.8.1 Any group that can experience prejudice about their care may have particular concerns about their care may have particular concerns about confidentiality.

- Women may be worried about the social stigma that can be attached to women who misuse drugs.
- Parents may be concerned about potential social services contact and fear that their children will be taken away if they are found to be drug misusers.
- Lesbian, gay and transgendered individuals may feel that their sexuality will be told to individuals without their permission or assumptions will be made about their sexual practices.
- Black and ethnic minority service users may be concerned that Livingstone House will make the assumption that they want a keyworker from their own community, though some individuals may feel more secure with someone who has no connection with their community.
- Service Users with a blood borne virus like HIV or Hepatitis C may be concerned that information about their condition will be shared, affecting attitudes towards them, insurance and employment.

5.8.2 Service Users from these groups have the same rights to confidentiality as anyone else. However, they may need extra reassurance about confidentiality and information sharing practices.

5.9 **Specific Settings**

5.9.1 Drug workers are employed in multi disciplinary teams and within different settings. Confidentiality boundaries will be service specific. Confidentiality should be explained specifically related to the environment at Livingstone House.

- Service Users involved with probation or subject to a Drug Rehabilitation Requirement (DRR) will need to give informed consent to information sharing with the probation service during the course of their order.
- Group situations (e.g. drug education and therapeutic groups) will need to set confidentiality boundaries specifically for the group, which should be included in the group ground rules.
- Livingstone House staff can be asked to attend child protection conferences to give confidential information about a service user in reference to their contact with a child. The service user does not need to give informed consent to this information being disclosed but consent should be gained where possible. The conference may want information about drug misuse or drug treatment, which should be provided in the interests of child protection, in accordance with local area child protection committee (ACPC) guidance. Attendance at child protection conferences should be prioritises, though a written statement is acceptable.

6.0 DOCUMENTATION

6.1 Internal References

Permission to Share/Consent form PAN assessment
Confidentiality Agreement

6.2 External References

Department of Health, (2003), Confidentiality: **NHS Code of Practice**, DOH, London.

Nursing and Midwifery Council, (2004), **NMC Code of Professional Conduct: Standards for Conduct, Performance and Ethics**, NMC, London.

British Association of Counselling and Psychotherapy, (2002), **Ethical framework for good practice in counselling and psychotherapy**, BACP, London.

Department of Health, (2000), **Data Protection Act 1998: guidance to social services**, DOH, London.

Department of Health (2001a), **Building the information core: protecting and using confidential patient information: a strategy for the NHS**, DOH, London.

Department of Health, (2001b) **National task force on violence against social care staff: self audit tool**, DOH, London.

DrugScope and Alcohol Concern, (1999), **Quality in alcohol and drug services: organisation standards (QuADS)**, DrugScope/Alcohol Concern, London.

General Medical Council (2000), **Confidentiality: protecting and providing information**, GMC, London.

National Treatment Agency, (2002), **Models of care for treatment of adult drug misusers: part two**, NTA, London.

National Treatment Agency, (2003), **Confidentiality and Information Sharing**, NTA, London.