

# Citizens Advice Somerset

## Confidentiality Policy

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Local Citizens Advice provide a confidential service to clients.

Nothing learned during the course of dealing with a client (including the fact that an enquiry has been made) will be passed to anyone outside the service without the client's permission, other than in exceptional circumstances with an appropriate lawful basis and where documented.

Interviews are held in visual and aural privacy. See also Citizens Advice guidance on [Client Interviews](#)

Clients are not required to state the nature of their enquiry in front of others

Referrals are made only with the knowledge and consent of the client or if there is a lawful condition for processing as stated in the [General Data Protection Regulation](#)

If a client agrees to information being given to a third party, there is no breach of confidentiality.

A [breach of confidentiality](#) will be authorised in some circumstances.

### **Responsibilities of staff, volunteers and trustees**

Everyone working for the Citizens Advice service must understand the client confidentiality policy and its importance, and must sign the [confidentiality declaration](#) (english and welsh) once they have read this policy and accompanying procedure. This includes all advisers, management and administrative staff, and anyone else offering services as part of the local office. Although trustee board members do not have contact with clients or client files on a day-to-day basis, they must also sign the declaration.

All personnel at Citizens Advice Somerset must have a practical understanding of what confidentiality means for the operation of the local service. This ranges from the most practical day-to-day matters such as ensuring that advisers do not discuss cases where they can be overheard by clients or people in the waiting room, to considering the impact of the principle on potential new services.

However, some discretion has to be used. For instance if someone has accompanied a client to the local office but left while the client is with an adviser, it is permissible for that person to be told that the client is still there, unless the client has expressly requested that this should not happen.

If anyone in authority requests information relating to a client, you should always refuse unless the client has given permission or any of the specific circumstances outlined in the section below apply. If pressed by an official, ask under what legal authority or statutory power the information is sought. If the reason given is not covered in this policy or the accompanying procedure, seek advice from the [Citizens Advice operations team](#).

## When confidentiality can be breached

A decision to breach confidentiality must always be taken very seriously. Although information about a client must not usually be passed on to a third party without the client's express permission, there are infrequent exceptions where there is evidence that:

1. a client or someone else is at risk
2. the good name or reputation of the Citizens Advice service is at risk
3. disclosure of information is required by law
4. a potential conflict of interest exists

Before a breach of confidentiality is sanctioned, a judgement as to whether there is a serious risk of danger to the client or others, or to the Citizens Advice service, has to be made.

This must be done in consultation with the National Citizens Advice operations team, unless there is:

1. a [serious and immediate risk](#)
2. a safeguarding concern about a child or a adult [at risk](#)
3. a need to breach confidentiality to inform a client there is a [conflict of interest](#) with an existing client

If a local office breaches client confidentiality without following the procedures laid down in this guidance, the local office should report using the '[Reporting and managing an information incident](#)' procedure as soon as the incident is discovered. If a local office fails to notify information incidents this could result in the local office being referred to the Membership and Performance Adjudication Panel.

## Crime and the police

### Disclosure of crimes

In England and Wales there is no duty to report a criminal offence, although it is an offence to assist in the commission of a crime or obstruct the police in the investigation of a crime. Being aware that a crime might take place is not, except in very unusual circumstances, assisting in the commission of that crime. However, if during the course of an interview a client begins to give information about criminal activities, it is good practice to warn the client of the consequences as the adviser could be [summoned as a witness](#).

There are exceptions where there is a legal duty on advisers to report information:

- [terrorism](#)
- [drugs and money laundering](#)
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If an adviser has concerns in relation to an **immediate** risk of harm to a person, they should follow the [procedure for immediate risks](#).

For guidance on prevention of crime where there is no immediate risk of harm please see the [sharing personal data](#) page on BMIS and follow the [breaching confidentiality procedure](#) as appropriate.

## **Police visits**

Police officer(s) visiting a Citizens Advice Somerset's local office because they're seeking information about clients should not be allowed into any room where confidential records are kept.

Section 19 (3) of the Police and Criminal Evidence Act 1984 (PACE) (in N. Ireland, Article 21 of the Police and Criminal Evidence (NI) order 1989) gives general powers to police officers, lawfully in any premises, to seize anything that they reasonably believe is evidence in relation to an offence under investigation, which might otherwise be concealed, lost, altered or destroyed. Preventing access to a room where records are kept forestalls the use of these powers, although it is very rare that the Police would seek to use them.

Except in the circumstances prescribed above, no questions about clients should be answered. The police officer(s) should be told about the confidentiality policy as an explanation for not answering questions. If the police persist in their enquiries, further guidance should be sought through the [Citizens Advice operations support team](#).

The client's permission to give the police information may be sought. However, if the police do not permit the client to be approached in this way or if the client refuses, the local office should make clear that a witness summons or production order will be required before information can be released.

For information about dealing with a request for information under Schedule 2 PART 1(2) of the Data Protection Act 2018, and see the section below.

## **Excluded materials**

The police may apply to a magistrates' court for a search warrant to inspect documents. Such a warrant would not however extend to "excluded material". "Excluded material" includes documents covered by legal privilege. The policy of Citizens Advice is that legal privilege applies to Citizens Advice case records and therefore confidential papers such as case notes and files are not open to such inspection. See the section on witness summons for more about legal privilege. If a local office is visited by police with a search warrant, contact the [Citizens Advice operations support team](#) for advice.

## **Production order**

In certain situations, the police are able to obtain a production order. In the event that such an order is produced the local office should immediately contact the [Citizens Advice operations support team](#) who will consult the appropriate subject matter expert teams and sometimes seek specialist legal advice.

## **Terrorism**

Under the Terrorism Act 2006, it is an offence for a person holding information about acts of terrorism to fail without reasonable excuse to disclose that information.

The Act applies to individual advisers rather than to the local office as a legal entity. However, it is a defence for employees to prove that they disclosed matters in accordance with procedures laid down by their employers.

Where the concern relates to a child or adult at risk the [safeguarding procedure](#) should be used. For any other concerns about disclosing information about terrorism, the [breaching confidentiality procedure](#) must be followed.

### **Drugs and money laundering**

The Drug Trafficking Act 1994 makes it a criminal offence to fail to report to the police suspicion or knowledge of drug-money laundering gained during the course of contact with a client. A local office will normally be required to disclose information. If an adviser knows of or suspects such activity the breaching confidentiality procedure should be followed.

The Proceeds of Crime Act 2002 extends the definition of money laundering to include possessing, dealing with or concealing the proceeds of crime more generally.

### **Social security fraud**

Under social security legislation there are two criminal offences concerning benefits:

- making or assisting with fraudulent claims
- failing to notify changes of circumstances concerning benefits

For guidance and information on this see [Benefit fraud and advisers](#). If a local office is asked by social security inspectors to produce written or oral evidence, the Citizens Advice [operations support team](#) should be contacted for advice. The local office must continue to treat all client records as confidential.

### **Powers of social security inspectors**

Social security legislation, including the Child Support Acts, gives wide powers to inspectors to make enquiries and to examine records. These powers in theory extend to the examination of local office case records.

In the event that an inspector asks for access to case records, the local office should check the inspector's identification and contact the [Citizens Advice operations support team](#) immediately for advice before allowing access.

### **Request for information from the Insolvency Service**

Local offices that support clients in submitting Debt Relief Order (DRO) applications, may be contacted by the Insolvency Service if a client is suspected of deception or fraud in relation to a DRO. The Insolvency Service may request case files and other relevant documents held on a client in relation to their DRO.

Citizens Advice has Competent Authority status under the Insolvency Service to submit DROs and local offices are expected and obligated to comply with such requests for confidential information from them. If a local Citizens Advice receives a request please contact the [operations support team](#) who will work with Information Governance to consider whether such requests meet the requirements of data protection law.

Requests for disclosure from the Insolvency Service and the Official Receiver may allow local Citizens Advice to use an exemption from Schedule 2 of the DPA 2018. This means the local office can disclose personal data where it may otherwise be prevented by data protection law. For example, where the Insolvency Service view the disclosure as necessary for prevention or detection of crime, information required to be disclosed by law etc. or in connection with legal proceedings or a function designed to protect the public. The Insolvency Service should make clear whether they believe an exemption applies to their request.

A lawful basis for the disclosure (per Article 6 and 9 of GDPR) may still be required where a Schedule 2 exemption is used. The appropriate lawful basis will correspond to the purpose of the request, e.g. performance of a task carried out in the public interest.

As the lawful basis of consent will not be available (as the client should not be asked to consent to a disclosure in these circumstances), we still need to consider that the disclosure of the information requested is necessary for the lawful basis we are using, e.g. necessary for the performance of a task carried out in the public interest.

This introduces a requirement for local offices to consider the proportionality of the request, and an obligation not to disclose information they don't believe is necessary for that purpose. For example, a request for all information on a client record, including very old information about a medical problem, is unlikely to be necessary or proportional. Local offices should encourage the Insolvency Service to confirm it is necessary or ideally refine their request.

If a local office fails to provide the information requested, the Official Receiver may make an application for them to be summoned before the Court to provide the information requested under the provisions of the Insolvency Act.

In relation to client confidentiality, one of the exceptions for local Citizens Advice is when disclosure of information is required by law. The above situation falls under this exception. Due to our partnership and Competent Authority status under the Insolvency Service we would strongly encourage local offices to cooperate with these requests and also log any contact and information breach with the [operations support team](#).

### **Witness summons**

If an adviser is asked to talk to the police about a client, to make a witness statement or receives a summons, they should contact the [Citizens Advice operations support team](#).

Whether an adviser can be forced to give information in court relating to a client depends on the principle of legal professional privilege. Certain communications between solicitors and their clients are protected by legal professional privilege and cannot be divulged even in court. Notes taken by a local office worker of a meeting between a solicitor and a client are similarly protected. The legal privilege belongs to

the client and so it is not for the local office to decide whether or not to waive it, but for the client.

Although it has not been tested, it is Citizens Advice policy, based on clear legal advice, that trained advisers giving legal advice are protected by legal professional privilege and that anyone opposed to this would have to challenge this view in court. If a local office is faced with this, the chief officer should contact the Citizens Advice operations team. You are likely to be advised by the Citizens Advice senior manager responsible for confidentiality issues and may well be put directly in contact with a specialist solicitor.

Following receipt of a witness summons, application may be made to the magistrates' court in person, or to the Crown or High Court in writing, to explain that the information has been obtained in the course of a confidential interview and to ask whether the evidence is still required. If the judge or magistrate rules that the evidence must be given, any refusal to go to court will be seen as contempt. Failure to attend may result in a warrant being issued and eventual arrest.

The client should be informed if an adviser receives a summons and the procedures and penalties should be explained to them. It must be made clear that attendance and disclosure of information may be required by the court even if the client objects. In no circumstances should the evidence to be given be discussed with the client.

## **Clients under 18**

If a young person under 18 is the local office client, the fact that they have contacted the local office and the details of their advice are confidential, unless we are required to disclose information for the reasons outlined in the ['When confidentiality can be breached'](#) section.

Based on guidance from the Information Commissioner's Office, Citizens Advice allow competent children to exercise their own data confidentiality rights. Where a child is not considered to be competent, an adult with parental responsibility may usually exercise the child's data protection rights on their behalf.

Although it is not easy to make a judgement on whether or not a particular young person has reached this position, the general guidance is that parental right yields to the child's right to make his own decisions when they reach a sufficient understanding and intelligence to be capable of making up their own mind on the matter requiring decision.

The local office should work on this basis with the onus being on the parent to show otherwise. If a local office is faced with such a challenge, advice should be taken from the Citizens Advice [operations support team](#).

There are also additional, child specific considerations that need to be taken into account when we process the data of clients under the age of 18. Guidance can be found on the [Information Commissioner's Office website](#). [Read more about children and special category data](#).

## **Death of a client**

There is separate guidance if you are asked for information as part of a [domestic homicide review](#).

The local office's duty of confidentiality to the client does not end with death. If a client has died, information relating to the records held by the local office should be given only to someone who is the dead person's executor or personal representative. Evidence of this status must be retained on file if information is released. There is no breach of confidentiality in handing over client records to an authorised executor or personal representative, and therefore you do not need to seek permission from the Citizens Advice operations team before releasing the information to such a person.

If the police make a formal request for information following the death of a client, e.g. where there are suspicious circumstances, it would be normal to try to get the consent of the executor or personal representative before releasing records. However, if the local office does not know who has taken this role or if the circumstances are such that this may not be in the best interests of the deceased person, for example, the local office understands that this may prejudice the police investigation, then advice should be sought from the [Citizens Advice operations support team](#). If it is decided that information can be released, the original papers should be retained and details of what documents have been released should be kept.

## **Bankruptcy**

If a client is bankrupt, the trustee in bankruptcy is entitled to any information relating to the client held by the local office. This means that the trustee in bankruptcy is in the same position in relation to the local office as the client would have been had they not been made bankrupt. Similar powers are given to a liquidator or administrator of a company where insolvency proceedings are underway.

## **Duties following a client's bankruptcy**

Once a client is bankrupt, the Official Receiver takes control of the client's property and is responsible for the sale and distribution of the assets. Under insolvency legislation, the Official Receiver is entitled to all documents needed for this. If the Official Receiver asks the local office for details of the financial advice given to a client without a court order, it would be good practice for the local office to seek the permission of the client before releasing details of the advice. But the client should be advised that the Official Receiver is entitled to this information and may seek a court order to get it.

Several local offices have faced problems where a client has opted for bankruptcy without informing the local office, and the local office has been contacted by the



Official Receiver asking for details of the advice given to a client prior to bankruptcy. The local office must make information available so far as it relates to the client's financial affairs.

However, the local office is under no duty to release information which has no relevance to the bankruptcy unless ordered by a court, or unless the client gives authority to reveal such information.

### **Informing the Official Receiver of bankruptcy offences**

The local office has no legal duty to proactively inform the Official Receiver of bankruptcy offences committed by a client who is bankrupt although it should advise the client of the implications of such offences.

### **Duties prior to bankruptcy**

The local office is not under any duty to contact the Official Receiver prior to bankruptcy or to pass on any information. However, if advising a client about the possibility of bankruptcy, the local office should advise on the dangers of preference payments, even if this is not raised by the client. This is because such preferences can be set aside after a bankruptcy.

### **Access by Citizens Advice staff, Legal Aid Agency and third parties**

#### **Citizens Advice staff, insurers and solicitors**

Citizens Advice staff, including those carrying out quality assurance activities, work in line with the principle of confidentiality when undertaking their roles. They are operating to ensure that clients receive the best advice from the local office. Therefore, consultation on a case (where giving details could enable the client to be identified), the sharing of documents or the accessing of case records relating to a client do not breach confidentiality. The condition for processing for these activities is legitimate interest and for special category data, explicit consent, that you'll have already collected from your client.

It is also appropriate, in circumstances such as when there is a negligence claim or complaint, to discuss cases and release documents to Citizens Advice staff, Citizens Advice insurers or solicitors. The condition for processing in such cases is legitimate interest and for special category data, exercise or defence of legal claims.

#### **Legal Aid Agency (LAA) access to case records**

Case files may need to be examined by LAA auditors to check that the local office meets contract standards. The Agency has agreed that all auditors are bound by the Citizens Advice service principle of confidentiality. If LAA auditors breach client confidentiality, they commit a criminal offence.

#### **Legal aid contract**

For this type of work the LAA has a statutory right to inspect legal aid files. When clients sign the application for legal help they agree that the LAA can see their files and so no further consideration of confidentiality is required.

The signing of the legal help form also ensures that there is no confidentiality issue if the local office realises that the client is receiving legal aid on the basis of false

information about their financial status. In this situation the local office is obliged under the LAA contract to report this potential abuse of legal aid to the LAA.

### **Specialist Quality Mark**

A local office can be accredited to the Specialist Quality Mark even though it is not funded by the LAA through a legal aid contract.

The Specialist Quality Mark requires the express permission of the client to be sought for their case file to be available to the quality assessor. If the local office wishes to become accredited to the Specialist Quality mark, it should create a custom consent form for use with relevant clients.

### **Third parties (including referrals)**

#### **Giving information to third parties**

Confidentiality is not breached if the client agrees to information being given to a third party. If a client agrees to their case being referred to another organisation, they should also be asked to actively confirm, by signed consent, which information given to the local office can be passed on to the other organisation. See referral and consent to share template [here](#) and Citizens Advice guidance on [sharing personal data](#).

There is a legal obligation to implement [data sharing or data processing agreements](#) wherever there is systematic data sharing with other organisations.

If you are routinely sharing data or you share data as part of a contract you need to ensure you have the right data sharing or data processing agreement in place which details who is the data controller and how the data is processed. For example, covering very specific work (e.g. benefit take-up contracts funded by social services) where a local Citizens Advice carries out benefit assessments and passes the information to the funder. The key to this is complete transparency with the client so that everything is done with their full understanding and agreement. This will also ensure that such work meets the requirements of data protection legislation. Local offices are sometimes concerned about whether they should warn other agencies about a client's behaviour when making a referral. This should be avoided except where there is a specific threat; even then you should be factual and not subjective (e.g. 'client appears agitated' not 'client is in a state'). When negotiating referral protocols, discuss how you are going to share such information and in what circumstances.

In some situations it is acceptable to vary the policy. The following situations relating to 'fact of a visit' are acceptable as long as you have the client's advance agreement, and the nature of the enquiry is not shared (unless the client permits this):

The third party:

- makes the appointment for the client (e.g. a GP receptionist) and/or
- needs to know whether someone has kept their appointment and / or
- knows whether the client has kept the appointment because of the layout of the premises.

One of the more problematic areas is where there is the potential for a sanction of some sort to be applied to the client if certain information is revealed, e.g. if the client could potentially be called to account for failing to attend a local office appointment. Even where clients are aware of this possibility, entering into such agreements is something the local office should be wary of.

### **Case conferences**

Local offices may participate in case conferences with the client's written consent. Depending on the agreement with the client, it may be necessary to make participation conditional on all agencies understanding that the local office is representing the client and will report back to them.

If a local office is requested to cooperate with a serious case review involving the death of a child, contact Citizens Advice using [the procedure](#) for all other situations. The presumption will be that the interests of the child override confidentiality.

### **Information about a client received from a third party**

Local offices frequently receive information about clients from third parties who are involved in a case - perhaps during a case conference. The local office should confirm that the third party has a condition for processing in place to share the client data with the local office. Ideally this would be covered by a data sharing agreement between partner organisations. The general principle is that any information passed to the local office should be put on the client's case record. This information should be available to the client.

When contact is first made with a third party they should be informed that the general practice is that information would be placed on the client record and would also be shared with the client unless consent was withheld, so that the local office and the third party are not put in a difficult situation. If there is regular sharing of data then having a data sharing agreement in place will help. It is very rare for third parties to refuse to provide consent to add such information to case records.

Where the third party does not give consent to share this with the client there needs to be clear justification of this recorded in case the client makes a Subject Access Request. The justification might be due to a risk that it would place on the client or third party, or another individual if such information were to be shared, such as health data or risk of violence from the client. Firstly, consider where you need to record the information.

If you need to record the information then store the information separately and make an office note in Casebook of where this information is stored and mark the note "see supervisor" if appropriate to do so. The [ICO guidance on Subject Matter Access](#) exemptions can be helpful. It must be stressed that such circumstances are very rare.

### **Enquiries on behalf of a third party**

If someone approaches a local office with an enquiry on behalf of someone else, advice and information can be provided in order to help move the matter forward for the absent person as long as no identifying personal information about the absent person needs to be recorded.

If an existing client would like someone else to act on their behalf or a local office is approached by an external organisation or individual who wants to act on behalf of the client, the '[client authority for third party to act on their behalf form](#)' should be used.

This authority should always come from a client directly and not from a third party. If the client isn't able to provide written authority themselves offices should verify the authority by speaking to the client.

A local office may allow a third party to act on behalf of the client without this form only where the enquirer has been formally appointed as the client's representative by way of:

- a power of attorney
- is a court appointed deputy or DWP appointee (for benefits purposes only)
- a court order
- their status as the formal personal representative following the death of a client (either through the will or following appointment as administrator).

Evidence of the appointment should be produced and a copy retained on file. See also the section on [giving information to third parties](#) and [data protection pages](#) on Citizens Advice intranet.

### **Test and Trace – historic policy for reference**

While the Test and Trace system is in place in England and Wales, local offices won't be asking for consent from clients to share their information with Test and Trace when requested. Instead, their information will be shared upon request unless they have decided to 'opt out'. This can be done at any time prior to sharing taking place. Local offices must make clients aware of this position in relation to sharing data for Test and Trace at the earliest appropriate opportunity, for example when consent is collected. This is only relevant when a client will be accessing face to face services.

As Test and Trace is new, guidance continues to be updated. Therefore, local offices should refer directly to the separate [Test and Trace Guidance and Policy](#) in any circumstances where a request for information is made by Test and Trace. This guidance also provides details on what to do if a client, staff member or volunteer is contacted by Test and Trace themselves or if they inform Citizens Advice of a positive COVID test.

## Version history

Date of change	Description of change
10 May 2019	Amendment to 'Police visits' section. Amends to below sentence in bold: <i>'Police officer(s) visiting a local office <b>because they're</b> seeking information about clients should not be allowed into any room where confidential records are kept.'</i> to make it clear that police visiting office for other reasons can be allowed in these areas where necessary under office discretion.
16 May 2019	Amendment to 'When confidentiality can be breached' section. Under list for 'This must be done in consultation with the Citizens Advice operations team, unless there is:' added additional bullet point to cover instances where local offices need to breach confidentiality due to a conflict of interest with an existing client.
01 October 2019	Updates made to links to GDPR/data protection BMIS pages because of the publishing of new pages and old ones being archived.
6 November 2019	Full review and update in preparation for publication of new Confidentiality procedure.
26 November 2020	'Production Order' section updated to add more detail on what steps are taken by the Operations Support team. Instances of ' <i>Immediate and urgent risk</i> ' changed to ' <i>Serious and immediate risk</i> ' to match language of BMIS guidance on confidentiality. Updated instances of ' <i>vulnerable adult</i> ' to ' <i>adult at risk</i> ' to match safeguarding guidance. Added links to conflict of interest, children and special category data and third party BMIS guidance pages. Updated to refer to new, separate policy on sharing information with Test and Trace.

	<p>'Enquiries on behalf of a third party' section amended to refer to new 'Client authority for a third party to act on their behalf form' and mirror more detailed consent guidance on BMIS.</p>
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