3.3. Knowledge of, and ability to work with, issues of confidentiality and consent

All professional codes relating to confidentiality make it clear that where there is evidence of imminent risk of serious harm to self or others, confidentiality can be breached and relevant professionals and family members/carers informed.

This applies to children/young people who are at risk of suicide or self-harm.

Decisions about issues of confidentiality and consent may be influenced by judgments about the individual's capacity.

Knowledge of policies and legislation

- An ability to draw on knowledge of local and national policies on confidentiality and information sharing both within and between teams or agencies
- An ability to draw on knowledge of the application of relevant legislation relating to legal capacity

Knowledge of legal definitions of consent to an intervention

- An ability to draw on knowledge that valid legal consent to an intervention is composed of three elements:
  - the person being invited to give consent must be capable of consenting (legally competent)
  - the consent must be freely given
  - the person consenting must be suitably informed
- An ability to draw on knowledge that individuals have a right to withdraw or limit consent at any time

Knowledge of capacity[d]

- An ability to draw on knowledge relevant to the capacity of individuals to give consent to an intervention:
  - that young people age 16 or over are presumed to have capacity to give or withhold consent, unless there is evidence to the contrary
  - that a child under 16, who is able to understand and make their own decisions, is able to give or refuse consent
  - that the capacity to give consent is a 'functional test' and is not dependent on age, and:
    - that a child under 16 with sufficient capacity and intelligence to understand the nature and consequences of what is proposed is deemed competent to give consent

[d] Competences relevant to the assessment of capacity are detailed elsewhere in the relevant section of this framework.

Knowledge of parental rights and responsibilities

- An ability to draw on knowledge of the principles of legislation relating to:
  - parental/carer rights and responsibilities
  - working with children/young people who are subject to care orders (looked-after children)
- An ability to draw on knowledge that if a child/young person is judged to be unable to consent to an intervention, consent should be sought from a carer with parental responsibilities, and:
  - an ability to seek legal advice about specific circumstances when consent can be accepted from a person who has care or control of the child/young person, but who does not have parental rights or responsibilities

Ability to gain informed consent to an intervention from children/young people and their parents/carers

- An ability to give children/young people the information they need to decide whether to proceed with an intervention, e.g.:
  - what the intervention involves and who is offering it
  - the potential benefits and risks of the proposed intervention
  - what alternatives are available to them
- An ability to use an interpreter where the first language of the children/young person or their parents/carers is not that used by the practitioner and their language skills indicate that this is necessary
- Where children/young people have a disability, an ability to ensure that information is provided in an accessible form (e.g. using an interpreter for children/young people with hearing impairments)
- An ability to invite and to actively respond to questions about the intervention
- An ability to address any concerns or fears about the intervention

- An ability to draw on knowledge that even where consent has been granted, it is usual to revisit this issue when introducing specific aspects of an assessment or intervention

Ability to draw on knowledge of confidentiality

- An ability to draw on knowledge that a duty of confidentiality is owed:
  - to the person to whom the information relates
  - to any people who have provided relevant information on the understanding it is to be kept confidential
- An ability to draw on knowledge that confidence is breached where the sharing of confidential information is not authorised by the people who provided it or to whom it relates

- An ability to draw on knowledge that there is no breach of confidence if:
  - information was provided on the understanding that it would be shared with a limited range of people or for limited purposes, and information has been shared in accordance with that understanding
  - there is explicit consent to the sharing

Sharing information to maintain safety

- An ability to draw on knowledge that it is appropriate to breach confidentiality when withholding information could:
  - place a child/young person others (e.g. family/carers, significant others, professionals or a third party) at risk of significant harm
  - prejudice the prevention, detection or prosecution of a serious crime
  - lead to an unjustified delay in making enquiries about allegations of significant harm to others

- An ability to judge when it is in the best interest of the child/young person to disclose information, taking into account their wishes and views about sharing information, holding in mind:
  - that disclosure is appropriate if it prevents serious harm to a child/young person who lacks capacity
  - the immediacy of any risk of suicide or self-harm (e.g. the degree of planning, the type of suicide method planned or already attempted, circumstances such as being alone, refusing treatment, or drinking heavily or being under the influence of drugs)

- An ability to draw on knowledge that the duty of confidentiality does not preclude listening to the views of family members/carers and significant others, or providing them with non-person specific information about managing a crisis or seeking support
- An ability to judge when sharing information within and between agencies can help to manage suicide risk
- An ability to discuss concerns about disclosure with colleagues (e.g. by discussing the case without revealing the child/young person's identity)

Ability to inform all relevant parties about issues of confidentiality and information sharing

- An ability to explain to all relevant parties (e.g. the child/young person, family/carers and other professionals) the limits of confidentiality and circumstances in which it may be breached (e.g. when a child/young person is considered to be at risk)
- An ability to inform all relevant parties about local service policy on how information will be shared, and to seek their consent to these procedures (e.g. the ways information about the assessment and intervention will be shared with referrers)

- An ability to revisit consent to share information if:
  - there is significant change in the way the information is to be used
  - there is a change in the relationship between the agency and the child/young person
  - there is a need for a referral to another agency who may provide further assessment or intervention
- An ability to draw on knowledge that safeguarding needs usually take precedence over issues of consent and confidentiality

Ability to assess the capacity to consent to information sharing[e]

- An ability to gauge the child/young person's capacity to give consent by assessing whether they:
  - have a reasonable understanding of what information might be shared, the main reason(s) for sharing it, and the implications of sharing or not sharing the information
  - appreciate and can consider the alternative courses of action open to them
  - express a clear personal view on the matter (as distinct from repeating what someone else thinks they should do)
  - are reasonably consistent in their view on the matter (i.e. are not changing their mind frequently)

Ability to share information appropriately and securely

- An ability to ensure that when decisions are made to share information the practitioner draws on knowledge of information sharing and guidance at national and local level, and:
  - shares it only with the person or people who need to know
  - ensures that it is necessary for the purposes for which it is being shared
  - check that it is accurate and up-to-date
  - distinguishes fact from opinion
  - understand the limits of any consent given (especially if the information has been provided by a third party)
  - establishes whether the recipient intends to pass it on to other people, and ensure the recipient understands the limits of any consent that has been given
  - ensures that the person to whom the information relates (or the person who provided the information) is informed that information is being shared, where it is safe to do so
- An ability to ensure that information is shared in a secure way and in line with relevant local and national policies

[e] Competences relevant to the assessment of capacity are detailed elsewhere in the relevant section of this framework.