



## Safeguarding Children

### Confidentiality and Client Access to Records

#### Policy Statement

Definition: '*Confidential information is information of some sensitivity, which is not already lawfully in the public domain or readily available from another public source, and which has been shared in a relationship where the person giving the information understood it would not be shared with others.*' (Information Sharing: Practitioners' Guide)

In our setting, staff and managers can be said to have a 'confidential relationship' with families. It is our intention to respect the privacy of children and their parents and carers, while ensuring that they access high quality early years care and education in our setting. We aim to ensure that all parents and carers can share their information in the confidence that it will only be used to enhance the welfare of their children. There are record keeping systems in place that meet legal requirements; means of storing and sharing that information take place within the framework of the Data Protection Act (2018) and the Human Rights Act (1998).

#### Confidentiality procedures

- Most information shared between the family, the child and the Setting is confidential to the pre-school. In exceptional circumstances this information is shared, for example where there is a child protection concern, to be shared with other professionals including social care or the police. Normally parents should give informed consent before information is shared, but in some circumstances, for example if a child is at risk, it may be appropriate that parental consent is not sought prior to the sharing of information. We will work in line with Local Safeguarding Partners procedures, and advice sought should there be a lack of clarity as to whether consent is required.
- Staff will discuss general matters in meetings, such as the child's development, but other sensitive information will be restricted to designated persons and key persons, and not shared with others unless necessary.
- We always check whether parents regard the information they share with us to be regarded as confidential or not.
- Members of staff do not discuss children with parents or anyone else outside the organisation, unless in a lawful way in accordance with our policies.
- Some parents sometimes share information about themselves with other parents as well as staff; the Setting cannot be held responsible if information is shared beyond those parents whom the person has 'confided' in.

- Information shared between parents in a discussion or training group is usually bound by a shared agreement that the information is confidential to the group and not discussed outside of it.
- We inform parents when we need to record confidential information beyond the general personal information we keep (see our record keeping procedures) - for example with regard to any injuries, concerns or changes in relation to the child or the family, any discussions with parents on sensitive matters, any records we are obliged to keep regarding action taken in respect of child protection and any contact and correspondence with external agencies in relation to their child. Where a decision is made to share confidential information, the reasons are recorded.
- We keep all records securely (see our record keeping procedures).
- Information may be kept in a manual file or electronically. Practitioners may use a laptop to type reports or letters which are then stored securely on One Drive.
- Where third parties share information about an individual, it must be checked by staff whether this information is confidential, both with regards to who shared the information, and about whom the information concerns.

### **Breach of confidentiality**

- Breach of confidentiality occurs when confidential information is not authorised by the person who provided it, or about whom it is about, without a lawful reason for sharing.
- If there is lawful reason, such as concern for a child's safety, then this is not a breach of confidentiality.

### **Lawful Reason**

- GDPR provides for the legal framework of protecting information, translated into the British legal system with the Data Protection Act 2018.
- The Data Protection Act 2018 provides 'safeguarding of children and individuals at risk' is a 'special category of personal data'. Practitioners can therefore share information without consent where consent cannot be reasonably obtained or gaining consent would place a child at risk.
- Information can be shared without authorisation if (1) it is in the public interest and (2) it is not possible or reasonable to gain consent or if gaining consent would place a child or other person at risk.

The public interest may include things like protecting someone from harm, preventing or detecting a crime, or complying with a Court order or other legal obligation.

- The need to share information is balanced with the needs of the individual for this information to be kept confidential. Proportionality is key.

### **Consent**

- Consent where required is only valid where it is fully informed, and the person giving consent is competent, and does so without coercion. Consent can be withdrawn after it has been obtained.
- Consent is informed when the person giving the consent understands why it is being obtained, for whom, what will be shared, the purposes of sharing it and the implications of sharing the information.
- Parents are advised that their informed consent will be sought in most cases, as well as the circumstances when consent may not be sought, or their refusal to give consent overridden.
- If staff have any doubts as to whether consent is necessary, they should liaise with the Executive Manager.
- Consent usually need only be obtained from one parent. Where parents are separated, this usually is the parent with whom the child resides. Where the child is looked after, the local authority as the 'corporate parent' may also need to be consulted before the information is shared.

### **Client access to records procedures**

Under GDPR there are additional rights given to 'data subjects'. Since children are too young to give informed consent, their parents or carers act as their 'subject' and have a right to see information that the Setting has compiled on them.

Parents may request access to any confidential records held on their child and family following the procedure below:-

- Any request to see the child's personal file by a parent or person with parental responsibility must be made in writing to the Executive Manager.
- The Executive Manager informs the chairperson of the management committee and sends a written acknowledgement.

- The Setting commits to providing access within 14 days, although this may be extended. 30 days is usual maximum, although this may be extended should there be appropriate circumstances. This should be explained to the data subject, and the maximum extension is 2 months.
- The Executive Manager and chairperson of the management committee prepare the file for viewing.
- Relevant third parties are contacted for consent. Third parties include separate entries pertaining to each parent, grandparent etc.
  - 'Third parties' include all family members who may be referred to in the records.
  - It also includes workers from any other agency, including social services, the health authority, etc. It is usual for agencies to refuse consent to disclose, preferring the individual to go directly to them.
  - When all the consents/refusals to disclose have been received these are attached to the copy of the request letter.
- The Executive Manager and chairperson of the management committee go through the file and remove any information which a third party has refused consent to disclose. This is best done with a thick black marker, to score through every reference to the third party and information they have added to the file. Anything which is refused to disclose must be confirmed in writing.
- Members of staff relevant to the information should also be contacted in writing, but the Setting reserves a right to override the refusal for consent under the legislation, or delete the name attached and retain the information relevant. If the information is sensitive, or for example the basis of a police investigation, refusal should be granted and not overridden.
- What remains is the information recorded by the Setting, detailing the work initiated and followed by them in relation to confidential matters. This is called the 'clean copy'.
- The file is ensured to be in correct order, with everything appropriately dated as required, and no missing pages.
- The 'clean copy' is photocopied for the parents who are then invited in to discuss the contents. The file should never be given straight over, but should be gone through by the Executive Manager, so that it can be explained in a meeting.

Only those with parental responsibility should attend the meeting, or the parent's legal advisor or interpreter. The file may be taken away, but it is never handed over without discussion.

- It is recognised and taken seriously by the Setting that re-writing records or removing material from records is an offence. Recording should never be limited for fear of a parent obtaining access of the records. No 'personal notes' should be separate from the records.
- Legal advice may be sought before sharing a file, especially where the parent has possible grounds for litigation against the Setting or another (third party) agency.
- If the parent is not happy with the information or treatment they have received, they should be referred to the complaint's procedure.

### Informal Discussions

It is sometimes necessary to have a discussion with the parent/carer of an individual child i.e. to sign the accident book, to discuss anything that has taken place during the session etc. In these circumstances, the parent/carer will be asked to come into the premises where the discussion will take place in a confidential environment. If it is not possible for the parent/carer for whatever reason to enter the premises, they will be asked to wait until all other children have been collected and left the premises before discussion takes place.

All the undertakings above are subject to the paramount commitment of the Setting, which is to the safety and well-being of the child. Please see also our policy on child protection.

This policy was adopted at a meeting of		
Held on		(date)
Date to be reviewed		(date)
Signed on behalf of the management committee		
Name of signatory		
Role of signatory		

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