

**High Street, Paulerspury, Towcester NN12 7NA**

**Telephone: 07851 296392 (during preschool hours)**

**Registered Charity Number: 1158601**

**Confidentiality and client access to records**

# Policy statement

*‘Share with informed consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, there is good reason to do so, such as where safety may be at risk. You will need to base your judgement on the facts of the case.’*

*Information sharing: Advice for practitioners providing safeguarding services to children, young people, parents and carers* (HMG 2015)

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. We have record keeping systems in place that meet legal requirements; the means that we use to store and share that information takes place within the framework of the General Data Protection Regulations (2018) and the Human Rights Act (1998).

**Confidentiality procedures**

Most things that happen between the family, the child and the setting are confidential to the setting. In certain circumstances information is shared, for example, a child protection concern will be shared with other professionals including social care or the police, and settings will give information to children’s social workers who undertake S17 or S47 investigations. Normally parents should give informed consent before information is shared, but in some instances, such as if this may place a child at risk, or a serious offence may have been committed, parental consent should not be sought before information is shared. Local Safeguarding Partners (LSP) procedures should be followed when making referrals, and advice sought if there is a lack of clarity about whether or not parental consent is needed before making a referral due to safeguarding concerns.

* Staff discuss children’s general progress and well-being together in meetings, but more sensitive information is restricted to designated persons and key persons and shared with other staff on a need-to-know basis.
* Members of staff do not discuss children with staff who are not involved in the child’s care, nor with other parents or anyone else outside of the organisation, unless in a formal and lawful way.
* Discussions with other professionals should take place within a professional framework, not on an informal basis. Staff should expect that information shared with other professionals will be shared in some form with parent/carers and other professionals, unless there is a formalised agreement to the contrary, i.e. if a referral is made to children’s social care, the identity of the referring agency and some of the details of the referral is likely to be shared with the parent/carer by children’s social care.
* It is important that members of staff explain to parents that sometimes it is necessary to write things down in their child’s file and explain the reasons why.
* When recording general information, staff should ensure that records are dated correctly and the time is included where necessary, and signed.
* Welfare/child protection concerns are recorded. Information is clear and unambiguous (fact, not opinion), although it may include the practitioner’s thoughts on the impact on the child.
* Records are non-judgemental and do not reflect any biased or discriminatory attitude.
* Not everything needs to be recorded, but significant events, discussions and telephone conversations must be recorded at the time that they take place.
* Recording should be proportionate and necessary.
* When deciding what is relevant, the things that cause concern are recorded as well as action taken to deal with the concern. The appropriate recording format is filed within the child’s file.
* Information shared with other agencies is done in line with these procedures.
* Where a decision is made to share information (or not), reasons are recorded.
* Staff may use a computer to type reports, or letters. Where this is the case, the typed document is deleted from the computer and only the hard copy is kept.
* Electronic copy is stored in a secure and confidential file on DropBox.
* The setting is registered with the Information Commissioner’s Office (ICO). Staff are expected to follow guidelines issued by the ICO, at <https://ico.org.uk/for-organisations/guidance-index/>
* Additional guidance in relation to information sharing about adults is given by the Social Care Institute for Excellence, at [www.scie.org.uk/safeguarding/adults/practice/sharing-information](http://www.scie.org.uk/safeguarding/adults/practice/sharing-information)
* Staff should follow guidance including Working Together to Safeguard Children (DfE 2018); Information Sharing: Advice for Practitioners Providing Safeguarding Services to Children, Young People, Parents and Carers 2018 and What to do if you’re Worried a Child is Being Abused (HMG 2015)

**Confidentiality definition**

* Personal information of a private or sensitive nature, which is not already lawfully in the public domain or readily available from another public source, and has been shared in a relationship, where the person giving the information could reasonably expect it would not be shared with others.
* Staff can be said to have a ‘confidential relationship’ with families. Some families share information about themselves readily; members of staff need to check whether parents regard this information as confidential or not.
* 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 group is usually bound by a shared agreement that the information is confidential and not discussed outside. The setting manager is not responsible should that confidentiality be breached by participants.
* Where third parties share information about an individual; staff need to check if it is confidential, both in terms of the party sharing the information and of the person whom the information concerns.
* Information shared is confidential to the setting.
* Practitioners ensure that parents/carers understand that information given confidentially will be shared appropriately within the setting (for instance with a designated person, during supervision) and should not agree to withhold information from the designated person or their line manager.

**Breach of confidentiality**

* A breach of confidentiality occurs when confidential information is not authorised by the person who provided it, or to whom it relates, without lawful reason to share.
* The impact is that it may put the person in danger, cause embarrassment or pain.
* It is not a breach of confidentiality if information was provided on the basis that it would be shared with relevant people or organisations with lawful reason, such as to safeguard an individual at risk or in the public interest, or where there was consent to the sharing.
* Procedures for Children’s records and data protection must be followed.

***Exception***

* GDPR enables information to be shared lawfully within a legal framework. The Data Protection Act 2018 balances the right of the person about whom the data is stored with the possible need to share information about them.
* The Data Protection Act 2018 contains “safeguarding of children and individuals at risk” as a processing condition enabling “special category personal data” to be processed and to be shared. This allows practitioners to share without consent if it is not possible to gain consent, if consent cannot reasonably be gained, or if gaining consent would place a child at risk.
* Confidential information may be shared without authorisation - either from the person who provided it or to whom it relates, if it is in the public interest and it is not possible or reasonable to gain consent or if gaining consent would place a child or other person at risk. The Data Protection Act 2018 enables data to be shared to safeguard children and individuals at risk. Information may be shared to prevent a crime from being committed or to prevent harm to a child, Information can be shared without consent in the public interest if it is necessary to protect someone from harm, prevent or detect a crime, apprehend an offender, comply with a Court order or other legal obligation or in certain other circumstances where there is sufficient public interest.
* Sharing confidential information without consent is done only in circumstances where consideration is given to balancing the needs of the individual with the need to share information about them.
* When deciding if public interest should override a duty of confidence, consider the following:
* is the intended disclosure appropriate to the relevant aim?
* what is the vulnerability of those at risk?
* is there another equally effective means of achieving the same aim?
* is sharing necessary to prevent/detect crime and uphold the rights and freedoms of others?
* is the disclosure necessary to protect other vulnerable people?

The decision to share information should not be made as an individual, but with the backing of the designated person who can provide support, and sometimes ensure protection, through appropriate structures and procedures.

**Obtaining consent**

Consent to share information is not always needed. However, it remains best practice to engage with people to try to get their agreement to share where it is appropriate and safe to do so.

Using consent as the lawful basis to store information is only valid if the person is fully informed and competent to give consent and they have given consent of their own free will, and without coercion from others, Individuals have the right to withdraw consent at any time.

You should not seek consent to disclose personal information in circumstances where:

* someone has been hurt and information needs to be shared quickly to help them
* obtaining consent would put someone at risk of increased harm
* obtaining consent would prejudice a criminal investigation or prevent a person being questioned or caught for a crime they may have committed
* the information must be disclosed regardless of whether consent is given, for example if a Court order or other legal obligation requires disclosure

**NB. The serious crimes indicated are those that may harm a child or adult; reporting confidential information about crimes such as theft or benefit fraud are not in this remit.**

* Settings are not obliged to report suspected benefit fraud or tax evasion committed by clients, however, they are obliged to tell the truth if asked by an investigator.
* Parents who confide that they are working while claiming should be informed of this and should be encouraged to check their entitlements to benefits, as they it may be beneficial to them to declare earnings and not put themselves at risk of prosecution.

**Consent**

* Parents share information about themselves and their families. They have a right to know that any information they share will be regarded as confidential as outlined in 07.1a Privacy notice. They should also be informed about the circumstances, and reasons for the setting being under obligation to share 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.
* Where there are concerns about whether or not to gain parental consent before sharing information, for example when making a Channel or Prevent referral the setting manager must inform their line manager for clarification before speaking to parents
* Consent must be informed - that is the person giving consent needs to understand why information will be shared, what will be shared, who will see information, the purpose of sharing it and the implications for them of sharing that information.

**Separated parents**

* Consent to share need only be sought from one parent. Where parents are separated, this would normally be the parent with whom the child resides.
* Where there is a dispute, this needs to be considered carefully.
* Where the child is looked after, the local authority, as ‘corporate parent’ may also need to be consulted before information is shared.

**Age for giving consent**

* A child may have the capacity to understand why information is being shared and the implications. For most children under the age of eight years in a nursery or out of school childcare context, consent to share is sought from the parent, or from a person who has parental responsibility.
* Young persons (16-19 years) are capable of informed consent.Some children from age 13 onwards may have capacity to consent in some situations. Where they are deemed not to have capacity, then someone with parental responsibility must consent. If the child is capable and gives consent, this may override the parent’s wish not to give consent.
* Adults at risk due to safeguarding concerns must be deemed capable of giving or withholding consent to share information about them. In this case ‘mental capacity’ is defined in terms of the Mental Capacity Act 2005 Code of Practice (Office of the Public Guardian 2007). It is rare that this will apply in the context of the setting.

**Ways in which consent to share information can occur**

* Policies and procedures set out the responsibility of the setting regarding gaining consent to share information, and when it may not be sought or overridden.
* Information in leaflets to parents, or other leaflets about the provision, including privacy notices.
* Consent forms signed at registration (for example to apply sun cream).
* Notes on confidentiality included on every form the parent signs.
* Parent signatures on forms giving consent to share information about additional needs, or to pass on child development summaries to the next provider/school.

## Client access to records procedures

* Parents may request access to any confidential records we hold on their child and family following the procedure below:
* The parent is the ‘subject’ of the file in the case where a child is too young to give ‘informed consent’ and has a right to see information that our setting has compiled on them.
* Any request to see the child’s personal file by a parent or person with parental responsibility must be made in writing to the setting manager.
* We acknowledge the request in writing, informing the parent that an arrangement will be made for him/her to see the file contents, subject to third party consent.
* Our written acknowledgement allows 30 working days for the file to be made ready.
* A fee may be charged for repeated requests, or where a request requires excessive administration to fulfil.
* Our manager informs their line manager and legal advice may be sought before sharing a file.
* Our manager goes through the file with their line manager and ensures that all documents have been filed correctly, that entries are in date order and that there are no missing pages. They note any information, entry or correspondence or other document which mentions a third party.
* We write to each of those individuals explaining that the subject has requested sight of the file, which contains a reference to them, stating what this is.
* They are asked to reply in writing to our manager giving or refusing consent for disclosure of that material.
* We keep copies of these letters and their replies on the child’s file.
* ‘Third parties’ include each family member noted on the file; so where there are separate entries pertaining to each parent, step parent, grandparent etc, we write to each of them to request third party consent.
* Third parties also include workers from any other agency, including children's social care and the health authority for example. Agencies will normally refuse consent to share information, preferring instead for the parent to be redirected to those agencies for a request to see their file held by that agency. Entries where you have contacted another agency may remain, for example, a request for permission from social care to leave in an entry where the parent was already party to that information.
* Each family member noted on the file is a third party, so where there are separate entries pertaining to each parent, step-parent, grandparent etc, each of those have to be written to regarding third party consent.
* Members of staff should also be written to, but the setting reserves the right under the legislation to override a refusal for consent, or just delete the name and not the information.
* If the member of staff has provided information that could be considered ‘sensitive’, and the staff member may be in danger if that information is disclosed, then the refusal may be granted.
* If that information is the basis of a police investigation, then refusal should also be granted.
* If the information is not sensitive, then it is not in the setting’s interest to withhold that information from a parent. It is a requirement of the job that if a member of staff has a concern about a child and this is recorded; the parents are told this at the start and in most cases, concerns that have been recorded will have been discussed already, so there should be no surprises.
* The member of staff’s name can be removed from an entry, but the parent may recognise the writing or otherwise identify who had provided that information. In the interest of openness and transparency, the setting manager may consider overriding the refusal for consent.
* In each case this should be discussed with members of staff and decisions recorded.
* When the consent/refusals have been received, the setting manager takes a photocopy of the whole file. On the copy file the document not to be disclosed is removed (e.g. a case conference report) or notes pertaining to that individual in the contact pages blanked out using a thick marker pen.
* The copy file is then checked by the line manager and legal advisors verify that the file has been prepared appropriately, for instance, in certain circumstances redaction may be appropriate, for instance if a child may be damaged by their data being seen by their parent/carer, e.g. if they have disclosed abuse. This must be clarified with the legal adviser.
* 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’.
* We photocopy the ‘clean copy’ again and collate it for the parent to see.
* Our manager informs the parent that the file is now ready and invites him/ her to make an appointment to view it.
* Our manager and their line manager meet with the parent to go through the file, explaining the process as well as what the content of the file records about the child and the work that has been done. Only the person(s) with parental responsibility can attend that meeting, or the parent’s legal representative or interpreter.
* The parent may take a copy of the prepared file away; but, to ensure it is properly explained to and understood by the parent, we never hand it over without discussion.
* It is an offence to remove material that is controversial or to rewrite records to make them more acceptable. Our recording procedures and guidelines ensure that the material reflects an accurate and non-judgemental account of the work we have done with the family.
* If a parent feels aggrieved about any entry in the file, or the resulting outcome, then we refer the parent to our complaints procedure.
* The law requires that the information we hold must be held for a legitimate reason and must be accurate (see our Privacy Notice). If a parent says that the information we hold is inaccurate, then the parent has a right to request for it to be changed. However, this only pertains to factual inaccuracies. Where the disputed entry is a matter of opinion, professional judgement, or represents a different view of the matter than that held by the parent, we retain the right not to change that entry, but we can record the parent’s view of the matter. In most cases, we would have given a parent the opportunity at the time to state their side of the matter, and it would have been recorded there and then.
* If there are any controversial aspects of the content of a child’s file, we must seek legal advice. This might be where there is a court case between parents, where social care or the police may be considering legal action, or where a case has already completed and an appeal process is underway.
* We never ‘under-record’ for fear of the parent seeing, nor do we make ‘personal notes’ elsewhere.

Telephone advice regarding general queries may be made to The Information Commissioner’s Office Helpline 0303 123 1113.

All the undertakings above are subject to the paramount commitment of our setting, which is to the safety and well-being of the child. Please see also our policy on Safeguarding Children and Child Protection.

**Legal framework**

* General Data Protection Regulations (GDPR) (2018)
* Human Rights Act (1998)

**Further guidance**

* [Working Together to Safeguard Children](http://www.gov.uk/government/publications/working-together-to-safeguard-children--2) (DfE 2018)
* [Information Sharing: Advice for Practitioners Providing Safeguarding Services to Children, Young People, Parents and Carers](http://www.gov.uk/government/publications/safeguarding-practitioners-information-sharing-advice) (HMG 2018)
* [What to do if you’re Worried a Child is Being Abused](http://www.gov.uk/government/publications/what-to-do-if-youre-worried-a-child-is-being-abused--2) (HMG 2015)
* [Mental Capacity Act 2005 Code of Practice](http://www.gov.uk/government/publications/mental-capacity-act-code-of-practice) (Office of the Public Guardian 2007)

|  |  |  |
| --- | --- | --- |
| This policy was adopted by |  | *(name of provider)* |
| On |  | *(date)* |
| Date to be reviewed |  | *(date)* |
| Signed on behalf of the provider |  |
| Name of signatory |  |
| Role of signatory (e.g. chair, director or owner) |  |