



Confidentiality Policy

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Regulations and Standards:

The Children's Homes (England) Regulations 2015:

- Regulation 11 – The Positive Relationship Standard
- Regulation 12 – The Protection of Children Standard.
- Regulation 13 – The Leadership and Management Standard.
- Regulation 21 – Privacy and Access.
- Schedule 2.
- Schedule 3.

Human Rights Act 1998.

Data Protection Act 2018.

General Data Protection Regulation (GDPR) 2018.

Working Together to Safeguard Children 2023.

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1. Introduction:

It is the responsibility of HND Children's Services Ltd to ensure that information



pertaining to children is protected, and that only those who have a legal right are given access.

All information, whether verbal or in writing, must be managed sensitively, giving paramount consideration to the welfare and safety of children.

The legal requirements are set out below, but the principle is that all information must be kept confidential unless disclosure has been consented to by the subject child, or disclosure is in the public interest e.g., the disclosure will help to protect a child or others from being harmed, or a criminal offence being committed.

Such consent, by a child, must be informed – see *'Consents Guidance Policy'*.

2. Legal Duty of Confidence:

Personal information held about children is subject to a legal duty of confidence and should not be disclosed without the consent of the subject child.

The legal framework for confidentiality is contained in common law, the Human Rights Act 1998, the Data Protection Act 2018, and General Data Protection Regulation (GDPR) 2018.

See *'Data Protection Policy'*.

3. Disclosure of Confidential Information in Exceptional Circumstances:

Whilst the general principle is that information obtained about children must be shared with them and not with others, there are exceptions. The public interest in child protection overrides the public interest in maintaining confidentiality, e.g., if there is a risk of harm to the child or others, then the law permits the disclosure of confidential information necessary to safeguard a child or children – 2020 updates to 'Working Together to Safeguard 2018' provide context regarding this:

Information sharing - guidance was refined in response to the Data Protection Act 2018 and General Data Protection Regulation (GDPR). This includes guidance about:

- appropriate information sharing of safeguarding and child protection concerns.
- data protection legislation to not prevent the sharing of information to keep a child safe.
- consent not being required when sharing information for safeguarding and protecting the welfare of a child.
- using GDPR guidance to inform decision making about appropriate information sharing.
- not needing to have the agreement of the child and parents to share information, it is important to explain the reasons for this. However, agreement is encouraged.

This strengthened guidance should support organisations in sharing information



between themselves and with statutory bodies.

Source – NSPCC.

Disclosure should be justifiable in each case, for example to provide information to professionals from other agencies working with the child and where possible and appropriate, the agreement of the person concerned should be obtained.

Those working with children must make it clear to them that confidentiality may not be maintained if the disclosure of information is necessary in the interests of the individual.

In these circumstances, disclosure will be appropriate for the purpose and only to the extent necessary to achieve that purpose. There may also be situations where third parties have a statutory right of access to the information or where a Court Order requires that access be given.

The circumstances in which information held in records on children and families can and should be disclosed and shared with others with or without consent are set out in the following sections.

In all other cases, where third parties such as advocates, solicitors or external researchers request access to information, this should only be given if written consent is given by the person concerned, if necessary and appropriate.

4. Informing Children about Disclosure:

Children should be informed of the circumstances in which information about them will be shared with other professionals. This may be provided in the form of a 'Children's Guide' or in other ways, and it will be made clear that in each case the information passed on will only be what is relevant and on a 'need to know' basis.

5. Disclosures and Sharing Information with Colleagues and Agencies:

Sharing information promptly with others working with the same child, or who may need to know, is invariably the key to safeguarding the child's interests. This includes information gathered as part of therapeutic intervention or counselling session.

Therefore, relevant information about children must be shared with colleagues, other professionals or agencies who have a role to play in their care or need the information in order to look after the child.

However, the general principle is that information may only be shared on a 'need to know' basis.

For example:

- Where professionals are undertaking a Child Protection Enquiry or Complaints



investigation in relation to a child.

- Where the Police are investigating a criminal offence or require information to help them find an absent, missing, or absconded child.
- Where information is requested for the furtherance of an inquiry or tribunal, or for the purposes of a Serious Case Review.
- Where the information is required by colleagues engaged in caring for the child or the information may reduce or prevent harm to the child at some time in the predictable future.

In such circumstances the person to whom the information relates should be informed that records have been requested or will be shared unless to do so, i.e., informing the person, would prejudice the purpose of the request.

Any objections they have should be considered before responding to the person making the request.

Where information or records are passed to others it should be noted and confirmed in writing.

Information may also be disclosed to persons who have a statutory right of access to the information, for example.

- Where the Court directs those records to be produced, or a Children's Guardian / Advocate is appointed.
- Where information is requested by Inspectors of the Regulatory Authority e.g., Ofsted or CQC (who have specific statutory powers that permit access to records).
- Independent Regulation 44 Visitors; only when signed consent is provided by the local authority and child (if appropriate).
- Where information is requested by telephone or electronically, great care must be taken to ensure that the recipient is entitled to receive the information requested. Electronic information should only be forwarded to a professional email account and not a personal one as this is not a secure site. Where there is any doubt, the information may not be provided without the approval of a manager.

End.