

## INFORMATION SHARING, RECORD KEEPING PROCEDURES AND GDPR

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### Introduction

The Create Approach Ltd is aware of the importance of accurate and up to date records, effective sharing systems and the importance of protecting information with secure systems and procedures. The Create Approach Ltd has reviewed processes against Pan Dorset Safeguarding Childrens Practice guidance, of which this policy has been based upon.

The Create Approach Ltd recognises that keeping children safe from harm requires practitioners to record, analyse and understand the significance of the information they have about:

- A child's health and development and any exposure to possible harm;
- A parent who may need help, or may not be able to care for a child adequately and safely; and
- Those who may pose a risk of harm to a child.

It is vital that information is shared in an appropriate and timely fashion. Often, it is only when information from a number of sources has been shared and is then put together, that it becomes clear that a child has suffered, or is likely to suffer, significant harm. The Create Approach Ltd recognises the importance of being proactive in sharing information as early as possible to help identify, assess and respond to risks or concerns about the safety and welfare of children. This includes when problems first emerge, or where a child is already known to Dorset or BCP local authority children's social care (e.g. they are being supported as a child in need or have a child protection plan).

**Information sharing should always be necessary, proportionate, relevant, accurate, timely and secure. A record should be kept of what has been shared, with whom and for what purpose and the reasoning behind it.**

The Create Approach Ltd remains alert to sharing important information about any adults with whom that child has contact, which may impact on the child's safety or welfare.

Information sharing is essential for the identification of patterns of behaviour for example when a child is at risk of going missing or has gone missing, when multiple children appear associated to the same context or locations of risk, or in relation to children in the secure estate where there may be multiple local authorities involved in a child's care.

The Create Approach Ltd acknowledges the important of being alert to sharing of information when a child moves from one local authority into another, due to the risk that knowledge pertinent to keeping a child safe could be lost.

The Create Approach Ltd works in liaison with the school for which a learner is enrolled and therefore will work in collaboration with the school in all areas where required.

**Where there is doubt as to conflict of information sharing if involving other family members, the Children Act 1989 determines that where there are concerns that a child is, or may be, at risk of significant harm, the overriding consideration is the welfare of the child.**

## **The UK General Data Protection Regulations (UK GDPR) and the Data Protection Act 2018**

The UK General Data Protection Regulations (UK GDPR) and the Data Protection Act 2018 supersede the Data Protection Act 1998.

The Create Approach Ltd must have due regard to the relevant data protection principles which allow them to share personal information.

The Create Approach Ltd is aware of the importance to understand the data protection principles which allow them to share personal information. The UK GDPR and Data Protection Act 2018 emphasise the need for organisations to be transparent and accountable in relation to their use of data. **All organisations handling personal data must ensure they have comprehensive and proportionate arrangements for collecting, storing, and sharing information. This also includes arrangements on informing service users about the information they will collect and how this may be shared.**

To effectively share information:

- All practitioners should be confident of the lawful bases and processing conditions which allow them to store, and share information. This includes information which is considered sensitive, such as health data. This is known under data protection legislation as 'special category of personal data';
- Where practitioners need to share special category data, for example where information obtained is sensitive and needs more protection, they need to identify both a lawful basis for processing under Article 6 of the UK GDPR and a special category condition for processing in compliance with Article 9 (see: **Information Commissioner's Office, Lawful basis for processing**);
- **Schedule 1 of the Data Protection Act 2018** has 'safeguarding of children and individuals at risk' as a processing condition that allows practitioners to share information, including without consent (where, in the circumstances consent cannot be given, it cannot be reasonably expected that a practitioner obtains consent, or if to gain consent would place a child at risk).
- In all cases The Create Approach Ltd will work with the main educational provision for which a learner is enrolled at.

### **2.1 Terminology used in the Data Protection Act and UK GDPR**

**Personal Data** - Under the UK GDPR, **personal data covers information which could be used to identify a person** (also sometimes called the 'data subject'). This includes for example, a person's name, address, or an identification / file number.

**Special category data** - Under the UK GDPR, special category data relates to **information about individuals which is particularly sensitive** and so needs greater protection before it is shared. This includes for example, information about a person's race and ethnic origin, their health and sexual orientation.

**Lawful Bases for Sharing Information (UK GDPR Article 6)** - The UK GDPR provides practitioners with a number of lawful bases for sharing information. It is not necessary to seek consent to share information for the purposes of safeguarding and promoting the welfare of a child, providing there is a lawful basis for the sharing.

**Consent** is also a lawful basis in UK GDPR and would **cover sharing where the individual has given clear consent for you to process their personal data for a specific purpose**; e.g. provision of Early help services. The UK GDPR sets a high standard for consent to share information, and requires that it must be specific, time limited and able to be withdrawn.

Consent means offering individuals real choice and control. Genuine consent should put individuals in charge, build trust and engagement. Consent is one lawful basis for processing information, but there are five others. You must always choose the lawful basis that most closely reflects the true nature of your relationship with the individual and the purpose of the processing.

The UK GDPR does not contain specific provisions on capacity to consent, but issues of capacity are bound up in the concept of 'informed' consent. Generally, you can assume that adults have the capacity to consent unless you have reason to believe the contrary. However, you should ensure that the information you provide enables them to be fully informed.

## Conditions for sensitive processing

To lawfully process **special category data**, you must identify both a lawful basis under Article 6 of the UK GDPR and a separate condition for processing under Article 9.

Article 9 contains 10 conditions which allow the processing of special category data. These include explicit consent and also 'substantial public interest'. Schedule 1, Part 2 of the Data Protection Act 2018 details what would be covered by the substantial public interest condition, and this includes the safeguarding of children and individuals at risk (18(1)):

**The processing is necessary for the purposes of:**

- **Protecting an individual from neglect or physical, mental or emotional harm; or**
- **Protecting the physical, mental or emotional well-being of an individual.**

The individual is:

- Aged under 18; or
- Aged 18 or over and at risk.

**Where there is a clear risk of significant harm to a child, or serious harm to adults the basis on which you can share information - including sensitive information - is therefore clear.**

In other cases, for example, neglect, the indicators may be more subtle and appear over time. In these cases, decisions about what information to share, and when, may be more difficult to judge.

The Create Approach Ltd requests all staff and visitors to discuss concerns about a child or young person with the centre lead, Kelly Sherman, DSL. The information shared should be proportionate and a record should be kept of what has been shared, with whom and for what purpose and the reasoning behind it.

### 3. The Seven Golden Rules for Information Sharing

The Create Approach Ltd will:

- i. Remember that the UK GDPR, Data Protection Act 2018 and Human Rights laws are not barriers to justified information sharing but provide a **framework to ensure that personal information about living individuals is shared appropriately**;
- ii. **Be open and honest** with the individual (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so;
- iii. The Create Approach Ltd will seek advice from the school of which the learner is enrolled and Pan Dorset if we are in any doubt about sharing the information concerned, without disclosing the identity of the individual where possible;
- iv. **Where possible The Create Approach Ltd will share with consent and, where possible, respect the wishes of those who do not consent to having their information shared.** Under the UK GDPR and Data Protection Act 2018 The Create Approach Ltd may share information without consent if, in our judgement, there is a lawful reason to do so, such as where safety may be at risk. The Create Approach Ltd will base judgments on the facts of the case. When sharing or requesting personal information from someone, The Create Approach Ltd will be clear of the basis upon which we are doing so. Where consent has not been provided The Create Approach Ltd will be mindful that an individual might not expect information to be shared;
- v. **Consider safety and well-being:** The Create Approach Ltd will base information sharing decisions on considerations of the safety and wellbeing of the individual and others who may be affected by their actions;
- vi. **Necessary, proportionate, relevant, accurate, timely and secure:** Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely (Practitioners must always follow their organisation's policy on security for handling personal information);
- vii. **The Create Approach Ltd will keep a record of decisions and the reasons for it** - whether it is to share information or not. If The Create Approach Ltd decide to share, then The Create Approach Ltd will record what has been shared, with whom and for what purpose.

Information on children and families can be held in many different ways, including in case records or electronically on a variety of IT systems which are accessible to different practitioners.

Information may be shared face to face, over the telephone or via secure email.

Whenever information is shared, a record of this should be made in the individual's record and the information should not be kept any longer than is necessary.

In some rare circumstances, this may be indefinitely, but if this is the case, there should be a review process scheduled at regular intervals to ensure data is not retained where it is unnecessary to do so. This review will be held at 6-month intervals.

### 4. Consent to Share Information

**Working Together to Safeguard Children** includes a Myth-busting guide to information sharing that states:

*"You **do not** need consent to share personal information.*

*It is one way to comply with the data protection legislation, but not the only way.*

*The UK GDPR provides a number of bases for sharing personal information. It is **not** necessary to seek consent to share information **for the purposes of safeguarding and promoting the welfare of a child** provided that there is a **lawful basis** to process any personal information required.*

*The legal bases that may be appropriate for sharing data in these circumstances could be 'legal obligation' or 'public task' which includes performance of a task in the public interest or the exercise of official authority. Each of the legal bases under UK GDPR has different requirements.*

***It continues to be good practice to be transparent and to inform parents / carers that you are sharing information for these purposes and seek to work co-operatively with them.** Practitioners should therefore usually inform parents / carers (and the child depending on their age and level of understandings) that they are going to make a referral.*

***However, referrals can be made without first informing parents / carers where to do so would place a child at risk.***

## **5. National Guidance on Sharing Information**

**Working Together to Safeguard Children states that:**

- *...'all organisations and agencies should have arrangements in place that set out clearly the processes and the principles for sharing information. The arrangement should cover how information will be shared within their own organisation/agency; and with others who may be involved in a child's life;*
- *...all practitioners **should not assume** that someone else will pass on information that they think may be critical to keeping a child safe. If a practitioner has concerns about a child's welfare and considers that they may be a child in need or that the child has suffered or is likely to suffer significant harm, then they should share the information with local authority children's social care and/or the police. All practitioners should be particularly alert to the importance of sharing information when a child moves from one local authority into another, due to the risk that knowledge pertinent to keeping a child safe could be lost.*

**Information Sharing: Advice for Practitioners Providing Safeguarding Services to Children, Young People, Parents and Carers** supports frontline practitioners working in child or adult service who have to make decisions about sharing personal information on a case- by-case basis. The guidance can be used to supplement local guidance and encourage good practice in information sharing'.

**The UK General Data Protection Regulation (UK GDPR) and Data Protection Act 2018** ensure that personal information is obtained and processed fairly and lawfully; only disclosed in appropriate circumstances; is accurate, relevant and not held longer than necessary; and is kept securely.

They balance the rights of the information subject (the individual whom the information is about) with the need to share information about them.

## **Caldicott Guardian Principles**

A Caldicott Guardian is a senior person responsible for protecting the confidentiality of patient, in our case learner, and service-user information and enabling appropriate information sharing. Good information sharing is essential for providing safe and effective care. There are also important uses of information for purposes other than individual care, which contribute to the overall delivery of health and social care or serve wider public interests.

The principles apply to the use of confidential information within health and social care organisations and when such information is shared with other organisations and between individuals, both for individual care and for other purposes.

### ***The Eight Caldicott Principles***

1. Justify the purpose(s) for using confidential information;
2. Use confidential information only when it is necessary;
3. Use the minimum necessary confidential information;
4. Access to personal confidential data should be on a strict need-to-know basis;
5. Everyone with access to confidential information should be aware of their responsibilities;
6. Comply with the law;
7. The duty to share information for individual care is as important as the duty to protect patient confidentiality;
8. Inform patients and service users about how their confidential information is used.

## **The Domestic Violence Disclosure Scheme**

The Domestic Violence Disclosure Scheme (DVDS) gives members of the public a formal mechanism to make enquires about an individual who they are in a relationship with, or who is in a relationship with someone they know, where there is a concern that the individual may be violent towards their partner.

This scheme adds a further dimension to the information sharing about children where there are concerns that domestic abuse is impacting on the care and welfare of children within the family.

Members of the public can make an application for a disclosure, known as the 'right to ask'. Anybody can make an enquiry, but information will only be given to someone at risk or a person in a position to safeguard the victim. The scheme is for anyone in an intimate relationship regardless of gender.

Partner agencies can also request disclosure is made of an offender's past history where it is believed someone is at risk of harm. This is known as 'right to know'.

If a potentially violent individual is identified as having convictions for violent offences, or information is held about their behaviour which reasonably leads the police and other agencies to believe they pose a risk of harm to their partner, a disclosure will be made. See: **Domestic Violence Disclosure Scheme: Guidance**.

**Article 8 in the European Convention on Human Rights states that:**

**Everyone has the right to respect for their private and family life, home and correspondence:**

There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others.

## Updates

[https://assets.publishing.service.gov.uk/media/5b07df82e5274a63a50b567e/2018-05-23\\_Factsheet\\_1\\_-\\_Act\\_overview.pdf](https://assets.publishing.service.gov.uk/media/5b07df82e5274a63a50b567e/2018-05-23_Factsheet_1_-_Act_overview.pdf)

