

Extratime

Information Sharing and Confidentiality Policy

The United Nations Convention on the Rights of the Child

Article 3 – *all organisations concerned with children should work towards what is best for each child.*

Article 12 – *children have the right to say what they think should happen when adults are making decisions that affect them, and to have their opinions taken into account.*

Article 13 – *children have the right to get and to share information, as long as the information is not damaging to them or to others.*

Article 16 – *children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.*

“Clear and accurate records are essential to track an agency or practitioner’s involvement with a child/family and to ensure sound decision making. Safeguarding and promoting the welfare of children often requires information to be shared between agencies supporting the child. By doing this, agencies can collaborate to make interventions evidence-based and effective.”

***Integrated working newsletter,
Every child matters/Children’s Workforce Development Council,
January 2009***

“Effective communication and sharing of information are vital. Recording and communicating information in a clear and timely manner, and systematically gathering information from a range of sources, improves identification of children and young people in need or at risk of harm. Sharing of information in cases of concern about children’s welfare will enable professionals to consider jointly how to proceed in the best interest of the child and to safeguard children more generally, and will inform effective assessments of children’s needs. Supporting tools such as ContactPoint will play an important role in facilitating better communication between practitioners in different services.”

***The Children’s Plan: Building brighter futures,
Department for Children, Schools and Families, December 2007***

Overview and rationale

Extratime acknowledges the importance of security and confidentiality of information it holds on children, young people and their families. However, Central Government policy as expressed through the Every Child Matters agenda places a strong emphasis on the need to share information within the law across organisational and professional boundaries, in order to ensure effective co-ordination and integration of services to give children, young people and their families the best possible chance to achieve their full potential. It is often necessary for agencies to share information so that children and young people can receive the services they need. Sometimes, it is only when information held by different agencies is put together that a child or young person is seen to be in need of additional or alternative services.

The aim of this policy is to outline how and when extratime may need to share information with other agencies it liaises with such as the schools and social services, and how this impacts on confidentiality.

Extratime recognises that parents have a right to know that information they share will be regarded as confidential. However, there are certain circumstances when the organisation will share information with parents consent and there are also circumstances when we are obliged to share information without parental consent. This policy details both sets of circumstances and should be read in conjunction with our Safeguarding Children and Young People Policy.

Key points when sharing information

- Information sharing is essential to enable early intervention. Such interventions help children, young people and families who need additional services to achieve positive outcomes, thus reducing inequalities between disadvantaged children and others. As the local area moves towards integrated working, the professional and confidential sharing of information between services is becoming increasingly important in delivering benefits for children, young people and their families. Extratime is very much an active part of multi agency working practices across the city and works closely with other agencies in this process.
- Information sharing is also vital to safeguarding and promoting the welfare of children and young people. A key factor in many serious case reviews has been a failure to record information, to share it, to understand the significance of the information shared, and to take appropriate action in relation to known or suspected abuse or neglect.
- Extratime and its employees should explain to children, young people and families at the outset, openly and honestly, what and how information will or could be shared and why, and seek their agreement via the signing of consent forms or in person. The exception to this is where to do so would put that child, young person or others at increased risk of significant harm or if it would undermine the prevention, detection or prosecution of a serious crime.

- Employees should ensure that any information shared is:
 - accurate and up to date
 - necessary for the purpose for which it is being shared
 - shared only with people who need to see it and
 - shared securely.
 - employees should always record the reasons for their decision in the child/young person's file – whether the decision is to share information or not and this will be signed by the staff member and their manager.

Whilst maintaining confidentiality with the child/young person being worked with, they must be encouraged to share the information being discussed with their parent carers if this is felt to be appropriate.

Information sharing with consent

When a child or young person is registered with extratime, the registration forms asks for the parent carers consent to talk to the child's or young person's teacher and/or to certain other professionals who may be working with the child and the family; for example a social worker or speech therapist. This is particularly important when the child or young person has a fairly complex disability, a medical condition or other factors which involve other professionals providing support to the child and the family. This helps extratime to gather accurate and up to date information about the child or young person which is relevant to their well being and enjoyment when they are in extratime's care. It also ensures that people who are working with the child or young person are consistent in the way they work, for example providing the child with similar boundaries, following behaviour management plans in the same way or working towards key milestones and developmental goals etc. These will be shared with parent carers when developed and/or reviewed.

The information and records extratime holds on each child or young person is shared internally with staff who are working with the child or young person. We also share information with other settings where a child attends more than one setting. This information, with the parent carers permission, may also be shared with other professionals if the child or young person is moving on from the service to access something new.

Information sharing without consent

Extratime is obliged to share confidential information without consent from the person who provided it or to whom it relates if this will prevent harm to a child or if not sharing the information could be worse than the outcome of having shared it. The Data Protection Act provides a framework to ensure that personal information about living persons is shared appropriately. In the Safeguarding Children and Young People Policy extratime details those circumstances which would necessitate

the organisation sharing information about a child or young person with other services.

The four critical criteria informing the decision are:

- evidence that the child or young person is suffering, or is at risk of suffering, significant harm.
- reasonable cause to believe that a child or young person may be suffering, or at risk of suffering, significant harm.
- to prevent significant harm arising to children or young people.
- to prevent a crime from being committed or intervene where one may have been committed, including the prevention, detection and prosecution of serious crime.

A decision to share information without consent is never taken lightly, it is a decision made jointly between staff and the designated officer and always puts the safety and well-being of children and young people first. The management committee receive reports from the designated officer where information has been shared without consent but the names have been removed; this helps ensure that the policy has been followed correctly. Careful record keeping of any concerns helps to support any decision for sharing information without consent. Details of protocols followed and forms used, in these circumstances, are to be found in the Safeguarding Children and Young People Policy.

In addition, Extratime will consider the following questions before sharing information:

Is there legitimate purpose to sharing the information?

Does the information enable the person to be identified?

Is the information confidential?

If the information is confidential, does the organisation have consent to share?

Is there a statutory duty or court order to share information?

If consent is refused, or there are good reasons not to seek consent, is there sufficient public interest to share information?

If the decision is to share, is the organisation sharing the right information in the right way?

Has the organisation properly recorded the decision?

All the undertakings above are subject to the paramount commitment of extratime, which is to the safety and well-being of the child or young person.

Extratime's procedure for sharing information is based on the *6 points for Good Practice* as set out in *Information Sharing: Practitioners' Guide (HMG 2006)*

1. Explain to families how, when and why information will be shared about them and with whom.

- That consent is normally obtained, unless it puts the child or young person at risk or undermines a criminal investigation

- extratime ensures parent carers receive information about our information sharing policy when registering their child or young person with the service and they sign a form to say that they *understand* circumstances when information may be shared without their consent. This will only be when it is a matter of safeguarding a child or vulnerable young person. This is on the registration form.
- Extratime ensures parents have information about the Safeguarding Children and Young People Policy which is available at all venues.
- Extratime ensures parent carers have information about the circumstances when information will be shared with external agencies for example with regard to any special needs the child may have or transition to a new service.

2. Consider the safety and welfare of the child when making a decision about sharing information.

- if there are concerns regarding ‘significant harm’ the child’s well being and safety is paramount. Extratime will record concerns and discuss these with the setting’s *designated person* and/or *designated officer (Zoe Anstey – Training and Development Manager)* from the management committee for safeguarding matters. A record will be made of decisions and the reasons why information will be shared and to whom.

Extratime will follow the procedures for reporting concerns and record keeping as detailed in The Safeguarding Children and Young People Policy.

3. Respect the wishes of children/young people and parents not to consent to share confidential information.

However, in the interests of the child or young person, extratime will decide when it is reasonable to override their wish.

Guidelines for consent are part of this procedure.

Managers are conversant with this and are able to advise staff accordingly.

As children and young people mature they are able to take more responsibility for their own decisions about confidentiality. The exception to this is where a learning disability impairs an individual’s capacity to consent. If a young person is Gillick competent, or Fraser competent then their wishes may be considered. Under the Mental Capacity Act the age at which a young person is considered an adult in terms of decision making is 16, not 18, and it sets out how decisions should be made about capacity. Gillick competence test and Fraser guidelines still apply if under 16. (See Appendix 1)

4. Seek advice when there are doubts about possible significant harm to a child or others.

Managers contact children's social care for advice where they have doubts or are unsure and follow procedures outlined in The Safeguarding Children and Young People Policy.

5. Information shared should be accurate and up-to-date, necessary for the purpose it is being shared for and shared only with those who need to know and shared securely.

Extratime's Safeguarding Children and Young People Policy and record keeping procedures set out how and where information should be recorded and what information should be shared with another agency when making a referral.

6. Reasons for decisions to share information, or not, is recorded.

Provision for this is set out in the Safeguarding Children and Young People policy. Parent carers have a right to be informed that their consent to share information will be sought in most cases, as well as the kinds of circumstances when their consent may not be sought, or their refusal to give consent overridden.

Extratime's policies and procedures set out the organisation's responsibility regarding gaining consent to share information and when it may not be sought or overridden and these are made available to parent carers at all venues where extratime provides a service.

Parent carers sign a registration form to say they understand that other professionals may be approached for information about their child or young person and are asked to give their consent to do so. A record of this communication will be kept on the child or young person's file and the parent carer updated through their communication sheet/book or in person (if appropriate).

How this impacts on confidentiality

- All employees who have access to information about children and young people have a duty to preserve confidence. Each individual's right to confidentiality must be respected. All personal information must be treated with care and kept securely; this means not disclosing it to people who do not need to know. If confidentiality is broken by any member of staff then disciplinary action may need to be taken.
- In normal circumstances the child/young person who is the subject of the information will be required to give consent before information about them can be shared. The consent of the provider of the information may also be required. Irrespective of the age and level of maturity of the child/young person, if information is disclosed which indicates that the child/young person involved (or another person) is at serious risk of harm, then confidentiality cannot be preserved as safeguarding procedures must take precedence.

- All children and young people (and their families, where appropriate) should be made aware of the level of confidentiality offered by practitioners working with them. This should include:
 - what information will be recorded
 - where and for how long it will remain recorded
 - the circumstances in which it may be shared with other people
 - the other people and agencies that may have or obtain access to the information and the reasons for all of the above.

Children and young people have a right to confidentiality if there is no risk of serious harm to them or any other person, but employees are encouraged to support the child/young person in talking with their parent carers on all issues.

Record Keeping

All records/incident reports/session review notes will be kept under lock and key and remain confidential. Access will only be for the supervisor and the co-ordinator, where necessary. *(In the event of suspected abuse of any kind, this information may be shown to social service staff)*

Any personal information about children, young people and families attending the project will be kept similarly in a locked storage and must never be shown to other parent carers or children in or outside of the project. However, the children's or young person's records must be kept open to their parents/carers. Parent carers can access this by asking the supervisor at the setting.

Minutes of staff meetings at which staff discuss children or young people or incidents, will also be treated confidentially. These are kept in a locked storage. If staff wish to use paperwork to evidence their practice in training, such as the NVQ, only blank copies of paperwork may be used.

The law says that everyone who is given a service should be able to see a written record of decisions which are taken concerning them and why those decisions have been taken. This information should be kept securely and confidentially and each record should describe the service given only to one person, so that person can ask to see the information that is kept on them.

The sort of information that should be kept includes the dates and times of any meetings, telephone conversations, letters sent and received (with actual copies kept) and face-to-face meetings. In addition to this, at the very least, a short account of the nature of the discussion should also be kept.

When a child/young person is looked after, employees are obliged to keep more detailed information to enable proper communication between professionals and Extratime.

Recorded information should not be kept any longer than necessary for the purpose for which the information was originally obtained. Any destruction of records should be in accordance with the organisation's record retention schedules. See Data Protection Policy and |Retention of Documents Policy.

When talking to children and young people:

1. If during your work with children and young people you are asked by them to keep something confidential you should consider whether it is OK to do so. If it is not OK, you should tell the child or young person honestly that you will have to tell someone e.g. the supervisor.
2. If what you are told relates to something minor that the child or young person feels is confidential or important e.g. s/he has fallen out with a friend then it would seem reasonable to keep this confidential.
3. If the child or young person has fallen out with a friend and that friend is bullying her and ganging up on her or threatening her then you need to tell the supervisor who in turn, may decide to notify parent carers. It is important at this stage to tell the child or young person you will need to tell someone else because it is not right.
4. If you are told something that presents a clear child protection issue e.g. physical/sexual violence you must immediately tell the co-ordinator who may in turn inform social services staff.

Support for employees working for Extratime

All employees can normally expect that their personal situations and health will remain confidential unless:

- it impinges on their terms of contract
- it endangers children or young people
- there is a legal obligation to disclose such information
- it is necessary for legal proceedings
- despite the duty of confidence, the practitioner's interest or the wider public interest justifies disclosure

All employees will be encouraged to share information appropriately and will be supported by senior management if there are any complaints that they have shared information inappropriately, providing that such sharing has followed advice provided..

Legal framework

Information sharing must be done in a way that is compatible with the Data Protection Act, the Human Rights Act and the common law duty of confidentiality.

Further guidance

“Ensuring that children and young people are kept safe and receive the best support they need when they need it is vital. Where information sharing is necessary to achieve this objective it is important that the practitioners have a clear understanding of when information can be shared. It is also for them to understand the circumstances of when sharing is inappropriate. The Data Protection Act is not a barrier to sharing information but is in place to ensure that personal information is shared appropriately.”

Richard Thomas, Information Commissioner

Introduction to ‘Information Sharing: Practitioners’ Guide’ (HMG 2006)

Information Sharing: Practitioners’ Guide

www.everychildmatters.gov.uk/files/ACB1BA35C20D4C42A1FE6F9133A7C614.pdf

In General

All staff must remember that incidents, issues and the general everyday information of families using the project must never be discussed outside the confines of the team and immediate management. This is for everyone’s protection and peace of mind. All staff must be especially careful when using social media e.g. Facebook and Twitter.

See Staff, Children and Young People E Safety Policy; Staff and Volunteer Conduct Policy;

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Appendix 1

Gillick or Fraser competent

In UK law, a person's 18th birthday draws the line between childhood and adulthood². The right of younger children/ young people to provide independent consent is proportionate to their competence, but a child/young person's age is an unreliable predictor of his or her competence to make decisions.

A judgement in the House of Lords in 1983 laid down the criteria for establishing whether a child/young person, irrespective of age, had the capacity to provide valid consent to treatment in specified circumstances³. In 1985 these were approved by the House of Lords and became known as the *Gillick Test*.

The criteria in the test for Gillick competence have provided professionals working with children/young people with an objective test of competence. This identifies

children/young people under 16 who have the legal capacity to consent to medical examination and treatment, providing they can demonstrate sufficient maturity and intelligence to understand and appraise the nature and implications of the proposed treatment or action, including the risks and alternative courses of action.

Lord Fraser's guidance is narrower and relates only to confidential contraception and sexual health advice. Both Gillick competence and the Fraser Guidelines are now frequently used as a yardstick for any practitioner when making a decision whether a child/young person has the right to *own their own consent* and to have more control over who can be told what about their confidential information. In practice, this means they have to consider carefully whether any young person aged 12 or over, possibly younger in some cases, is Gillick or Fraser competent.

A child/young person with learning difficulties or disabilities is just as likely as any other to be Gillick/Fraser competent. To ascertain whether a particular child/young person on a particular occasion has sufficient understanding to consent, or refuse to consent, to the sharing of information about them, you need to consider:

- can the child/young person understand the question you are asking of them, having used appropriate age and ability-related language or preferred mode of communication?
- does the child/young person have a reasonable understanding of:
 - what information might be recorded/shared?
 - the reasons why this happens?
 - the implications of information being recorded or shared?
- can the child/young person:
 - appreciate and consider alternative courses of action open to them?
 - weigh up one aspect of the situation against another?
 - express a clear personal view on the matter, as distinct from repeating what someone else thinks they should do?
 - be reasonably consistent in their view on the matter, or are they constantly changing their mind?

² *The Children Act 1989 s105(1)*

³ *Gillick v West Norfolk and Wisbech AHA and DHSS (1983)*

Appendix 2

Extracts from *HM Guidance: Training on information sharing*

7 golden rules for information sharing

1 Remember that the Data Protection Act is not a barrier to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately.

2 Be open and honest with the person (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. The exceptions to this are where telling the person concerned would put that child, young person or others at increased risk of significant harm (or an adult at risk of serious harm) or if it would undermine the prevention or detection of a serious crime.

3 Seek advice if you are in any doubt, without disclosing the identity of the person where possible.

4 Share with 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, that lack of consent can be overridden in the public interest. You will need to base your judgement on the facts of the case.

5 Consider safety and well-being: base your information sharing decisions on considerations for the safety and well-being of the person and others who may be affected by their actions.

6 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.

7 Keep a record of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose. If you decide not to share, record the reason for not sharing.