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**Example Confidentiality Policy**

SCOPE OF THIS CHAPTER

This procedure sets out the responsibility of the employee to familiarise themselves with the handling of confidential information in the context of their supportive work role and as an employee of TSD 4 Foster Carers.

AMENDMENT

This guidance was reviewed and updated in May 2019 following the introduction of the General Data Protection Regulations (GDPR) and Data Protection Act 2018.

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1.1 Introduction

TSD 4 Foster Carers recognises its common law duties to safeguard the confidentiality of all personal information. Wherever disclosure of confidential information to another person or organisation is being considered, a check will always be made to ensure that such disclosure is lawful.

All TSD 4 Foster Carers staff must be made aware that the UK General Data Protection Regulations (UK GDPR) and Data Protection Act 2018 apply to the processing of all personal data, both in paper and electronic records. Where disclosure is proposed, and there is any doubt as to whether the Data Protection Act / UK GDPR apply or whether only the common law of confidentiality applies, advice will always be sought, from the manager of TSD 4 Foster Carers or the designated GDPR representative.

TSD 4 Foster Carers will always record its reasons for deciding not to observe any duty of confidence it owes to a person who is the subject of information disclosed.

E-mail messages sent via the internet can be intercepted, read and changed relatively easily. Consequently, all staff will not use the internet to pass on personal identifiable information about service users unless a secure or encrypted connection is in place.

1.2 Staff Obligations

As per the conditions of employment, issued as part of every employee's contract, detail the obligations placed upon TSD 4 Foster Carers staff.

Staff employed with TSD 4 Foster Carers will come into contact with confidential information/data relating to the work of its service users and other staff. Staff are bound by their conditions of service to respect the confidentiality of any information that they may come into contact with and under no circumstances should such information be divulged or passed to any persons or organisation in any form unless such disclosure is authorised under this policy.

Any unauthorised disclosure of confidential information by a member of staff may result in disciplinary action. Staff may also face prosecution under the Data Protection Act 2018.

Where staff misuse confidential information, e.g. disclose their password to someone else or use someone else's password to gain access to systems, they could face disciplinary action that could lead to dismissal. They may also be prosecuted under the Computer Misuse Act 1990.

Managers must ensure that confidentiality is discussed with all new employees, as part of their induction. It is recommended that staff acknowledge that they have taken note of the contents of this policy.

Volunteers and work experience students must also have their role in maintaining confidentiality made clear by the member of staff responsible for them and must be aware of and adhere to this policy.

1.3 Commercial Confidentiality

Some members of staff may have access to commercial information, agreements or contracts. This information must be treated as confidential, and only discussed/disclosed where this forms part of the employee's remit within the organisation. Staff should consult their manager if they are in any doubt.

1.4 Research, Audit and Monitoring

Access to confidential information or anonymous data may be sought for research, audit or monitoring purposes, either by internal users or by outside organisations or public bodies.

Internal requests related to research projects must be approved and a formal submission will be required.

All external requests or enquiries may need to be directed to the Data Protection Officer for clarification or Legal Services for their approval.

1.5 Press Interest, Police and Legal Enquiries

All media enquiries should be referred to the manager.

The Police do not have automatic rights to personal information held by the Council about service users. The matter should always be referred to a manager and/or the Data Protection Officer/Legal Services.

Any requests for access to confidential information held by the company for the purpose of any legal proceedings must be referred to the manager. A Court Order is required in order to release such information for legal proceedings. Verbal or written requests from lawyers are not sufficient. Staff should also seek advice from their manager and, where advised, the Data Protection Officer to ensure that correct action is taken.

2. Confidentiality Values and Principles

The following guidance should be read along with the publication Information Sharing: Advice For Practitioners Providing Safeguarding Services To Children, Young People, Parents And Carers (March 2015).

2.1 Personal information is subject to a legal duty of confidence

Personal information held about children is subject to a legal duty of confidence and should not normally be disclosed without the consent of the subject. The exceptions to this are set out in Paragraph 2.2 below.

The legal framework for confidentiality is contained in the common law duty of confidence, the Children Act 1989, the Human Rights Act 1998, the UK General Data Protection Regulations (UK GDPR) and and the Data Protection Act 2018.

2.2 Disclosure of confidential information is permitted in exceptional circumstances

Whilst the general principle is that information obtained about children and their families must be shared with them and not with others, there are exceptions. The public interest in safeguarding the welfare of children overrides the public interest in maintaining confidentiality and the law permits the disclosure of confidential information where this is necessary to safeguard a child or children. Effective information-sharing underpins integrated working and is a vital element of both early intervention and safeguarding.

Disclosure of confidential information 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 and families must make it clear to them that confidentiality may not be maintained if the disclosure of information is necessary in the interests of the child. Even 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 or if a Court Order requires it.

2.3 Situations where disclosure is permitted should be shared with children involved

Children and families should be informed of the circumstances in which information about them will be shared with others, and their consent to this sharing obtained. They should also be helped to understand that, in some situations, sharing information without consent could be justified – for example to safeguard a child or adult at risk. It should be made clear that in each case the information passed on will only be what is relevant and on a 'need to know' basis.

2.4 Information should be disclosed to colleagues and other professionals/agencies on a need to know basis

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.

Therefore, relevant information about children must be shared with colleagues, other professionals or agencies that may have a role to play in their care.

There are also situations where employees have a legal duty to share information.

For example:

Where professionals are undertaking a Section 47 Enquiry in relation to a child;

Where information is requested in the furtherance of an inquiry or tribunal, or for the purposes of a Serious Case Review.

In such circumstances the person to whom the information relates should be informed that records have been requested unless to do so 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 that records be produced or a Children's Guardian is appointed;

Where information is requested by Inspectors of the Regulatory Authority (who have specific statutory powers that permit access to records).

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. Where there is any doubt the information may not be provided without the approval of a manager.

3. Freedom of Information Act 2000

The Freedom of Information Act 2000 came into force on 1 January 2005.

Under the Act anybody may request non personal information in writing or via e-mail from a public authority (which includes all local authorities) and must receive a response within 20 working days. The Act confers two statutory rights on applicants:

To be informed in writing whether or not the public authority holds the information requested; and if so;

To have that information communicated to them.

The Act applies to all information whether recent or old.

The Act sets out 23 exemptions from rights of access to information. If the information is exempt, there is no right of access under the Act.

One exemption relates to personal information. This means that an application for personal information under the Act is exempt and will not therefore be dealt with under the Act. See Access to Records / Subject Access Requests Procedure.

Another category relates to information provided in confidence where disclosure would involve an actionable breach of confidence. This would include information provided by a member of the public about a child protection issue where the provider has provided the information on the basis that anonymity will be maintained.

The Act therefore does not change the legal position into the principles of confidentiality set out in paragraphs 2.1 to 2.4 above.