



<b>Policy No:</b> SJD/ORG/09	<b>Authorised by:</b> Davina Powell	<b>Review Date:</b> 2 <sup>nd</sup> November 2023
<b>Policy Date:</b> 12th April 2021		<b>Date of Next Review:</b> 1 <sup>st</sup> November 2024
<b>CONFIDENTIALITY AND SHARING OF INFORMATION</b>		

## 1. INTRODUCTION

- a) SJD Homes is fully committed to ensuring that we maintain information securely and that if we share information, it is in accordance with our legal, statutory, and common law duties, and, that it meets the requirements of any additional guidance.
- b) This policy has been written to set out clear and consistent principles that satisfy the requirements of the law that all staff must follow when using and sharing personal information.

## 2. POLICY APPLICATION

- a) This policy applies to all members of staff providing services on behalf of SJD Homes.
- b) This policy covers paper, verbal, and computer-based information.

## 3. LEGAL DUTIES

- a) The principles outlined in this policy are recommended good standards of practice or legal requirements.
- b) This policy has been developed in accordance with the principles established by the *Children Act 1989; Children Act 2004; Working Together to Safeguard Children 2018; Common Law Duty of Confidentiality*, the *Human Rights Act 1998*, the *Data Protection Act 2018*, the *Postal Services Act 2000* and *General Data Protection Regulations (GDPR) (2018)*.
- c) SJD Homes seeks to ensure that we apply the *Information Commissioner's Office Code of Practice's 'Fair Processing'* and *'Best Practices'* standards and adhere to/demonstrate a commitment to achieving the appropriate compliance with the *Data Protection Act 2018*.
- d) The *General Data Protection Regulation (GDPR)* and the *Data Protection Act 2018* introduced new elements to the data protection regime, superseding the *Data Protection Act 1998*.

**The *GDPR* and *Data Protection Act 2018* do not prevent, or limit, the sharing of information for the purposes of keeping children and young people safe.**

## 4. ORGANISATIONAL RESPONSIBILITY

SJD Homes is responsible for ensuring that organisational measures are in place to protect the security and integrity of personal information and that staff are properly trained to understand their responsibilities and comply with the law.

## **Matters Relating to Children/Young People**

- a) All children/young people provided with services by SJD Homes are entitled to privacy and have the right to have information about them kept confidential.
- b) All information, whether verbal or in writing, must be managed sensitively, giving paramount consideration to the welfare and safety of children/young people.
- c) It is each staff member's responsibility to ensure that information pertaining to children/young people is protected, and that only those who have a legal right, are given access.
- d) It is important for staff to remember that information held on young people is not the property of their parent(s)/carer(s) and that they do not automatically have the right to see a young person's file.
- e) Children/young people should be encouraged to read and contribute to the records kept about them. They should be encouraged to endorse individual records and/or record dissent where appropriate.
- f) Additionally, staff must explain that there is a closed section in each young person's file and that "third party" information is kept in this section and is not available to them.

## **5. DISCLOSURE AND SHARING INFORMATION WITH COLLEAGUES AND OTHER AGENCIES**

### **Individual Responsibilities**

- i) Every individual working for the organisation is personally responsible for the safekeeping of any information they obtain, handle, use and disclose.
- ii) Every individual should know how to obtain, use, and share information they legitimately need to do their job.
- iii) Every individual has an obligation to request proof of identity or takes steps to validate the authorisation of another before disclosing any information requested.
- iv) Every individual should uphold the general principles of confidentiality, follow the guidelines set out in this policy and seek advice when necessary.
- v) Every individual should be aware that any violation of privacy or breach of confidentiality may be considered unlawful. Disclosure of personal information, which cannot be justified on legal or statutory grounds, whether inadvertently or intentionally, could be subject to disciplinary action which could lead to their dismissal. Criminal proceedings might also be brought against that individual.
- vi) In requesting release and disclosure of information from other agencies, staff will not seek to override the procedures which each organisation has in place to ensure that information is not disclosed illegally or inappropriately. This responsibility also extends to third party disclosures; any proposed subsequent re-use of information which is sourced from another agency should be approved by the source organisation.

## 6. GENERAL PRINCIPLES/GUIDANCE FOR DISCLOSURE AND SHARING INFORMATION WITH COLLEAGUES AND OTHER AGENCIES

### The welfare of the Child is Paramount

- a) Information sharing is essential for effective safeguarding and promoting the welfare of children and young people. Poor or non-existent information sharing is a factor repeatedly identified as an issue in Serious Case Reviews (SCRs) carried out following the death of or serious injury to, a child. In some situations, sharing information can be the difference between life and death. Sharing relevant information promptly with others working with the same child or any other person who may need to know, is invariably the key to safeguarding the child/young person's interests.
- b) Sharing weekly/monthly reports with Placing Local Authorities is part of the Individual Placement Agreement. The Placing Authority (in most circumstances) is the "corporate parent".
- c) Sharing information with Police Services regarding Missing Young People is part of our legal safeguarding obligations.
- d) There will be other circumstances where other requests will be made by agencies which are not "routine". For example:
  - i) Where professionals are undertaking a Child Protection Enquiry or Complaints investigation in relation to a child.
  - ii) Where the Police are investigating a criminal offence.
  - iii) Where information is requested in the furtherance of an inquiry or tribunal, or for the purposes of a Serious Case Review.
  - iv) 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.
  - v) Where the Court directs that records be produced, or a Children's Guardian is appointed.
  - vi) Where information is requested by Inspectors of a Regulatory Authority e.g., Ofsted (who have specific statutory powers that permit access to records).

Note: Regulation 44 Independent Visitors do not have an automatic right to inspect the confidential records relating to children/young people. Young people should therefore be requested to complete a signed authorisation to permit this if they are willing to do so. Written consents should also be sought from the placing authority.

- e) In other circumstances always consider safety and well-being: base your information sharing decisions on considerations of the safety and well-being of the individual and others who may be affected by their actions.
- f) The general principle is that where information is shared only that which is needed and relevant will be shared. This will be on a "need to know" basis.
- g) Information which is relevant to safeguarding<sup>1</sup> will often be data which is considered 'special category personal data' meaning it is sensitive and personal:

- i) where staff need to share special category personal data, they should be aware that the *Data Protection Act 2018* includes 'safeguarding of children and individuals at risk' as a condition that allows practitioners to share information without consent
- ii) information can be shared legally without consent, if a practitioner is unable to, cannot be reasonably expected to gain consent from the individual, or if to gain consent could place a child at risk.
- iii) relevant personal information can be shared lawfully if it is to keep a child or individual at risk safe from neglect or physical, emotional, or mental harm, or if it is protecting their physical, mental, or emotional well-being.
- h) Keep a record of your decision and the reasons for it - whether it is to share information or not. Where information or records are passed to others it should be noted and confirmed in writing.
- i) Information shared should be accurate and up to date and should clearly distinguish between fact and opinion. If the information is historical then this should be explained. Information quality needs to be of a standard fit for the purpose information is to be used for, including being complete, accurate and as up to date as required for the purposes for which it is being shared. Without this any decision made on the information may be flawed and inappropriate actions may result.
- j) Personal data and sensitive Personal Data should only be shared for a specific lawful purpose or where appropriate consent has been obtained.
- k) Every practitioner must take responsibility for sharing the information they hold and cannot assume that someone else will pass on information, which may be critical to keeping a child safe. If you are in any doubt, you must consult a manager.
- l) Where information is requested by telephone or electronically, great care must be taken to ensure that the recipient is who they say they are and are entitled to receive the information requested. Where there is any doubt, the information may not be provided without the approval of a Manager.

## **7. DISCLOSURE OF CONFIDENTIAL INFORMATION IN EXCEPTIONAL CIRCUMSTANCES**

- a) The general principle is, that all information must be kept confidential unless disclosure has been consented to by the subject child/young person 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 there are exceptions.
- b) 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.

Where there are concerns about the safety of a child, the sharing of information in a timely and effective manner between organisations can improve decision-making so that actions taken are in the best interests of the child. The *GDPR* and *Data Protection Act 2018* place duties on organisations and individuals to process personal information fairly and lawfully; they are not a barrier to sharing information, where the failure to do so would cause the safety or well-being of a child to be compromised. Similarly, human rights concerns, such as respecting the right to a private and family life would not prevent sharing where there are real safeguarding concerns.

- c) 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. The most important consideration is whether sharing information is likely to support the safeguarding and protection of a child.

- d) Staff must make it clear to children/young people, that confidentiality may not be maintained if the disclosure will be appropriate for the purpose and only to the extent necessary to achieve that purpose. It should be explained that their safety is the paramount concern and therefore, if they, or any other person, would be at risk of significant harm unless the information is disclosed.

## **8. STORAGE AND SECURITY OF INFORMATION**

### **a) Written Information**

At all times written information must be securely maintained within the appropriate locked filing cabinets in secure staff offices and not be available for unauthorised viewing.

### **b) Electronic Information**

Electronic information must also be securely stored using SJD Homes approved computer systems and secure e-mail addresses.

### **c) Children/Young People's Post**

It is against the law to open mail that is intended for someone else (Section 84, *Postal Services Act 2000*).

- i) Mail addressed to children/young people must not be opened by staff unless express written consent has been given by the child/young person (or an order of a court has given permission for this to happen)
- ii) All young people must be made aware that they must not open mail addressed to other young people or those unknown to them. This is particularly important for those resources which are not staffed on a 24 hour basis.
- iii) If mail arrives which is not addressed to an individual young person, it must be handed to the scheme manager.

## **9. PRIVACY**

- a) Staff must uphold young people's right to privacy in respect of their individual rooms, knocking and announcing who they are prior to being given permission to enter. In exceptional circumstances where staff are genuinely concerned for a young person's safety they may enter without permission.

However, this is the exception. This information will all be entered into the daily logbook and the young person's social worker will be informed.

- b) Staff will also respect young people's need for privacy by not entering bathrooms/toilets unless the young person is considered to be at risk.
- c) Young people in our accommodation have private access to a phone to use for contact with their families/key kin, social worker, and children's rights organisations such as the Children's Commissioner, NSPCC, and Voice.

## **10. MATTERS RELATING TO SJD HOMES**

- a) As a general principle all matters relating to SJD Homes are confidential and must not be discussed with external parties. The exceptions to this are the placing local authority, social worker, parents (where it is safe and appropriate to do so) and those carrying out Local Authority Quality Assurance Inspections.
- b) Nothing in this policy/guidance should prevent the reporting of criminal acts, professional misconduct or acts contrary to the welfare of young people, physical, sexual, or emotional abuse,



racist, sexist, or homophobic comments or behaviour, breaches of the Children's Home Regulations or any other applicable regulations, and any other activity, action, omission, or circumstance which jeopardises the welfare of the young people or the reputation of the accommodation/organisation.

Such matters should be reported initially to the appropriate line manager and/or the On-Call Manager.

#### **11. THE MEDIA**

- a) The Managing Director is the only person authorised to give statements about the Company or matters connected with the Company to reporters from the newspapers, radio, television etc.
- b) Employees should not make unauthorised statements on any social media, internet site or social networking media.
- c) Any request from any representative of the media for information, statements or comment about the Company must be referred to the Managing Director.

#### **12. MATTERS RELATING TO COLLEAGUES**

- a) Generally, all matters relating to colleagues are confidential to them.
- b) Staff should not discuss information about individual colleagues amongst themselves or in front of young people - this can seriously undermine the individual's professional standing and teamwork.
- c) If a member of staff has concerns relating to a colleague this should first be addressed between the two staff in a sensitive manner away from young people and other staff. If the issue cannot be resolved between the two it should be referred to the line manager or the on-call manager for assistance.
- d) If staff have concerns about issue pertaining to a colleague's private life and this clearly impinges on their professional role with SJD Homes, they should follow the steps outlined above.
- e) Staff members' private details, telephone number, addresses etc. are only available to the line manager and on-call manager. They will not be disclosed to young people or other staff members.
- f) Staff are reminded that they are in a place of work whilst in the children's homes or semi-independent living schemes. It is not acceptable for staff family members to come to the accommodation nor is it acceptable for staff to give young people personal details about themselves such as their home address, private telephone number etc.

#### **13. MYTH-BUSTING GUIDE**

Source: *Information Sharing — Advice for Practitioners Providing Safeguarding Services to Children, Young People, Parents, and Carers (HM Government July 2018)*

Sharing of information between practitioners and organisations is essential for effective identification, assessment, risk management and service provision. Fears about sharing information cannot be allowed to stand in the way of the need to safeguard and promote the welfare of children and young people at risk of abuse or neglect.

Below are common myths that can act as a barrier to sharing information effectively:

**a) The *GDPR* and *Data Protection Act 2018* are barriers to sharing information**

No - the *GDPR* and *Data Protection Act 2018* do not prohibit the collection and

sharing of personal information. They provide a framework to ensure that personal information is shared appropriately. In particular, the *Data Protection Act 2018* balances the rights of the information subject (the individual whom the information is about) and the possible need to share information about them. Never assume sharing is prohibited - it is essential to consider this balance in every case. You should always keep a record of what you have shared.

**b) Consent is always needed to share personal information**

No - you do not necessarily need the consent of the information subject to share their personal information.

Wherever possible, you should seek consent and be open and honest with the individual from the outset as to why, what, how and with whom, their information will be shared. You should seek consent where an individual may not expect their information to be passed on. When you gain consent to share information, it must be explicit, and freely given.

There may be some circumstances where it is not appropriate to seek consent, either because the individual cannot give consent, it is not reasonable to obtain consent, or because to gain consent would put a child or young person's safety or well-being at risk.

Where a decision to share information without consent is made, a record of what has been shared should be kept.

**c) Personal information collected by one organisation cannot be disclosed to another organisation**

No - this is not the case, unless the information is to be used for a purpose incompatible with the purpose it was originally collected for. In the case of children in need, or children at risk of significant harm, it is difficult to foresee circumstances where information law would be a barrier to sharing personal information with other practitioners.

Practitioners looking to share information should consider which processing condition in the *Data Protection Act 2018* is most appropriate for use in the particular circumstances of the case. This may be the safeguarding processing condition or another relevant provision.

**d) The *Common Law Duty of Confidentiality* and the *Human Rights Act 1998* prevent the sharing of personal information**

No - this is not the case. In addition to the *GDPR* and *Data Protection Act 2018*, practitioners need to balance the common law duty of confidence, and the rights within the *Human Rights Act 1998*, against the effect on children or individuals at risk if they do not share the information.

If information collection and sharing is to take place with the consent of the individuals involved, providing they are clearly informed about the purpose of the sharing, there should be no breach of confidentiality or breach of the *Human Rights Act 1998*. If the information is confidential, and the consent of the information subject is not gained, then practitioners need to decide whether there are grounds to share the information without consent. This can be because it is overwhelmingly in the information subject's interests for this information to be disclosed. It is also possible that a

public interest would justify disclosure of the information (or that sharing is required by a court order, other legal obligation, or statutory exemption).

In the context of safeguarding a child or young person, where the child's welfare is paramount, it is possible that the common law duty of confidence can be overcome. Practitioners must consider this on a case-by-case basis. As is the case for all information processing, initial thought needs to be given as to whether the objective can be achieved by limiting the amount of information shared - does all of the personal information need to be shared to achieve the objective?

