

Confidentiality and Access To Records

Policy Statement

'Share information with consent, and where possible, respect the wishes of those who do not consent to having their information shared. Under the GDPR and Data Protection Act 2018 you may share information without consent if, in your judgement, there is a lawful basis to do so, such as where safety may be at risk. You will need to base your judgement on the facts of the case.' Information sharing: Advice for practitioners providing safeguarding services to children, young people, parents and carers (July 2018)

At Chestnut Playgroup, staff and the committee members can be said to have a 'confidential relationship' with families. It is our intention to respect the privacy of children and their parents/carers, while ensuring that they access high quality early years care and education in our setting. We aim to ensure that all parents/carers can share their information in the confidence that it will only be used to enhance the welfare of their children. There are record keeping systems in place that meet legal requirements; means of storing and sharing that information take place within the framework of the General Data Protection Regulations and the Human Rights Act.

Chestnut Playgroup is registered with the Information Commissioner - Registration Number: **ZA062681**.

Confidentiality Procedures

- Some families share information about themselves readily. We always check whether parents/carers regard the information they share with us to be regarded as confidential or not.
- Personal information of a private or sensitive nature, which is not already lawfully in the public domain or readily available from another public source, and has been shared in a relationship, where the person giving the information could reasonably expect it would not be shared with others.
- Information shared with other agencies is done so in line with our Information Sharing policy.
- Some parents/carers sometimes share information about themselves with other parents/carers as well as staff; we cannot be held responsible if information is shared beyond those parents/carers whom the person has 'confided' in.
- Information shared between parents/carers in a group is usually bound by a shared agreement that the information is confidential and not discussed outside. The Preschool Leader is not responsible should that confidentiality be breached by any participants.
- Where third parties share information about an individual; staff need to check if it is confidential, both in terms of the party sharing the information and of the person whom the information concerns.
- Information shared is confidential to the setting.
- Information shared between committee members during a committee meeting is bound by a shared agreement that the information is confidential to the group and not discussed outside of it.
- We inform parents/carers when we need to record confidential information beyond the general personal information we keep (see our Record Keeping procedures and Privacy Notice) - for example with regard to any injuries, concerns or changes in relation to the child or the family, any discussions with parents/carers on sensitive matters, any records we are obliged to keep regarding action taken in respect of child protection and any contact and correspondence with external agencies in relation to their child.
- Parents/carers should understand that information given confidentially will be shared appropriately within the setting (for instance with a Designated Person, during supervision) and should not agree to withhold information from the Designated Person or their line manager.
- We keep all records securely (see our record keeping procedures and Privacy Notice).
- Staff discuss children's general progress and well-being together in meetings, but more sensitive information is restricted to Designated Persons and Key Persons and shared with other staff on a need-to-know basis.
- Members of staff do not discuss children with staff who are not involved in the child's care, nor with other parents/carers or anyone else outside of the organisation, unless in a formal and lawful way.
- Members of staff do not discuss children with staff who are not involved in the child's care, nor with other parents/carers or anyone else outside of the organisation, unless in a formal and lawful way.
- Discussions with other professionals should take place within a professional framework, not on an informal basis. Staff should expect that information shared with other professionals will be shared in some form with parent/carers and other professionals, unless there is a formalised agreement to the contrary, i.e. if a referral is made to children's social care, the identity of the referring agency and some of the details of the referral is likely to be shared with the parent/carer by children's social care.

Breach Of Confidentiality

- A breach of confidentiality occurs when confidential information is not authorised by the person who provided it, or to whom it relates, without lawful reason to share.
- The impact is that it may put the person in danger, cause embarrassment or pain.
- It is not a breach of confidentiality if information was provided on the basis that it would be shared with relevant people or organisations with lawful reason, such as to safeguard an individual at risk or in the public interest, or where there was consent to the sharing.
- Procedures set out in our Children's Records policy, and data protection must be followed.

Access To Children's Records Procedures

Under the General Data Protection Regulations there are additional rights granted to data subjects which must be protected by the setting.

The parent/carer is the 'subject' of the file in the case where a child is too young to give 'informed consent' and has a right to see information that the setting has compiled on them.

Parents/carers may request access to any confidential records held on their child and family following the procedure below:

- Any request to see the child's personal file by a parent/carer or person with parental responsibility must be made in writing to the Preschool Leader.
- The Preschool Leader informs the Chair of the committee and sends a written acknowledgement to the parent/carer.
- The playgroup commits to providing access within 14 days, although this may be extended in exceptional circumstances. Information must be provided within 30 days of receipt of request.
- If the request for information is not clear, the Chair or Preschool Leader must receive legal guidance, for instance, from Law-Call for members of the Early Years Alliance. In some instances it may be necessary to allow extra time in excess to the 30 days to respond to the request. An explanation must be given to the parent/carers where this is the case. The maximum extension time is 2 months.
- A fee may be charged to the parent/carer for additional requests for the same material, or any requests that will incur excessive administration costs.
- The Preschool Leader and/or Chair of the Committee prepare the file for viewing and ensures all documents are filed correctly, entries are in date order and that there are no missing pages. They note any information, entry or correspondence or other document which mentions a third party. The Preschool Leader should always ensure that recording is of good quality, accurate, fair, balanced and proportionate and should have quality assurance processes in place to ensure that files are checked for quality regularly and that any issues are addressed promptly.
- Each of those individuals are written to, explaining that the subject of the file has requested sight of the file which contains a reference to them, stating what this is.
- They are asked to reply in writing to the Preschool Leader giving or refusing consent for disclosure of that material.
- Copies of these letters are retained on file.
- Each family member noted on the file is a third party, so where there are separate entries pertaining to each parent, step-parent, grandparent etc, each of those have to be written to regarding third party consent.
- 'Third parties' also includes workers from any other agency, including social services, the health authority, etc. It is usual for agencies to refuse consent to disclose, preferring the individual to go directly to them.
- When all the consents/refusals to disclose have been received these are attached to the copy of the request letter.
- Agencies will normally refuse consent to share information, and the parent/carers should be redirected to those agencies for a request to see their file held by that agency.
- Entries where you have contacted another agency may remain, for example, a request for permission from Social Care to leave in an entry where the parent/carer was already party to that information.
- Members of staff should also be written to, but the setting reserves the right under the legislation to override a refusal for consent, or just delete the name and not the information.
- If the member of staff has provided information that could be considered 'sensitive', and the staff member may be in danger if that information is disclosed, then the refusal may be granted.
- If that information is the basis of a police investigation, then refusal should also be granted.
- If the information is not sensitive, then it is not in the setting's interest to withhold that information from a parent/carer. It is a requirement of the job that if a member of staff has a concern about a child and this is recorded; the parent/carers are told this at the start and in most cases, concerns that have been recorded will have been discussed already, so there should be no surprises.
- The member of staff's name can be removed from an entry, but the parent/carer may recognise the writing or otherwise identify who had provided that information. In the interest of openness and transparency, the Preschool Leader may consider overriding the refusal for consent.
- In each case this should be discussed with members of staff and decisions recorded.
- When the consent/refusals have been received, a photocopy of the complete file is taken.
- The Preschool Leader and Chair of the Committee go through the copy file and remove any information which a third party has refused consent to disclose, and/or document(s) not to be disclosed is removed (e.g. a case conference report). A thick black marker is used to score through every reference to the third party and information they have added to the file, or notes pertaining to that individual in the contact pages blanked out using a thick marker pen.
- The copy file is then checked by the line manager and legal advisors verify that the file has been prepared appropriately, for instance, in certain circumstances redaction may be appropriate, for instance if a child may be damaged by their data being seen by their parent/carer, e.g. if they have disclosed abuse. This must be clarified with the legal adviser.
- What remains is the information recorded by the playgroup, detailing the work initiated and followed by them in relation to confidential matters. This is called the 'clean copy'.
- A photocopy of the 'clean copy' is taken, collated and reviewed to ensure the effectiveness of the removal of information where consent to disclose has not been given.
- The 'clean copy' is photocopied again for the parent/carer(s). The Preschool Leader informs the parent/carer(s) that the file is now ready and they are then invited in to make an appointment to view it, and to discuss the contents.
- The Preschool Leader and the Chair of the Committee meet with the parent/carer(s) to go through the file, explaining the process as well as what the content records about the child and the work that has been done. Only the persons with parental responsibility can attend that meeting, or the parent's/carer's legal representative or interpreter.
- The file should never be given straight over, but should be gone through by the Preschool Leader, so that it can be explained. The parent/carer may take a copy of the prepared file away, but it is never handed over without discussion.
- Legal advice may be sought before sharing a file, especially where the parent/carer has possible grounds for litigation against the playgroup or another (third party) agency.

- It is an offence to remove material that is controversial or to rewrite records to make them more acceptable. If recording procedures and guidelines have been followed, the material should reflect an accurate and non-judgemental account of the work done with the family.
- If a parent/carer feels aggrieved about any entry in the file, or the resulting outcome, then the parent/carer should be referred to our Complaints procedure for parents/carers and service users.
- The law requires that information held must be accurate, and if a parent/carer says the information held is inaccurate then the parent/carer has a right to request it to be changed. However, this only pertains to factual inaccuracies. Where the disputed entry is a matter of opinion, professional judgement, or represents a different view of the matter than that held by the parent/carer, the setting retains the right not to change the entry but can record the parent's/carer's view. In most cases, a parent/carer would have had the opportunity at the time to state their side of the matter, and this should have been recorded there and then.
- If there are any controversial aspects of the content of a client's file, legal advice must be sought. This might be where there is a court case between parents/carers or where social care or the police may be considering legal action, or where a case has already completed and an appeal process is underway.
- We should never 'under-record' for fear of the parent/carer seeing, nor should they make 'personal notes' elsewhere.

All the undertakings above are subject to the paramount commitment of the playgroup, which is to the safety and wellbeing of the child. Please also see our Safeguarding Children and Child Protection policy.

Legal Framework

- General Data Protection Regulations (GDPR) 2018
- Human Rights Act 1998

Further Guidance

- Information Sharing: Advice for Practitioners Providing Safeguarding Services to Children, Young People, Parents and Carers (HMG 2024)
- What to do if you're Worried a Child is Being Abused (HMG 2015)
- Mental Capacity Act 2005 Code of Practice (Office of the Public Guardian 2007)
- Working Together to Safeguard Children (DfE 2023)
- The Information Commissioner's Office <https://ico.org.uk/> or helpline 0303 123 1113

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Signed:

Name: Caroline Wilson

Position: Chair