

# St Marychurch Pre-school

## **Confidentiality and Data Protection Policy**

### Statement of intent

It is our intention to respect the privacy of children and their parents and carers, while ensuring that they access high quality early years care and education in our setting.

### **Aim**

We aim to ensure that all staff, volunteers, parents and carers can share their information in the confidence that it will only be used to enhance the welfare of the children.

### **Methods**

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 Data Protection Act and the Human Rights Act.

### **Procedure**

- Practitioners check with parents whether they regard the information they share with them to be regarded as confidential or not.
- Some parents sometimes share information about themselves with other parents as well as practitioners, the pre-school cannot be held responsible if information is shared beyond those parents whom the person has 'confided' in. On induction practitioners sign documentation to agree to keep all information within the setting private and confidential, unless deemed necessary by the safeguarding lead.
- It is usually understood that information shared between parents in a discussion or training group is to be kept confidential to the group and not discussed outside of it. The settings manager is not responsible should that confidentiality be breached by participants.
- If third parties share information about an individual, practitioners need to check if it is confidential, both in terms of party sharing the information and of the person whom the information concerns.
- Information shared is confidential to the setting.
- Practitioners ensure that parents/carers understand that information given confidentially will be shared appropriately within the setting (such as with the designated person, during supervision and should not agree to withhold information from the designated person or manager).
- Practitioners will inform parents when they need to record confidential information beyond the general personal information we keep, for example with regard to any injuries, concerns or changes in relation to the child or the family, any discussions with parents 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.
- Discussions with other professionals/agencies should take place within a professional framework, not on an informal basis. Practitioners should expect that information shared with other professionals/agencies will be shared in some form with parents/carers and other professionals, unless there is a formalised agreement to the contrary for example 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 the children's social care.

- Issues to do with the employment of practitioners, whether paid or unpaid, remain confidential to the people directly involved with making personnel decisions.
- Students on Early Years Alliance or other recognised qualifications and training, when they are observing in the setting, are advised of our confidentiality policy and required to respect it and follow it.
- All records are kept securely.
- This policy is also to be read in conjunction with the Record Keeping Policy.

In certain circumstances information is shared, for example a child protection concern will be shared with other professionals including social care or the police and the settings will give information to children's social workers who undertake S17 or S47 investigations. Usually, parents should give their consent before information is shared, however, in some instances, such as when a child may be placed at risk, or a serious offence may have been committed, parental consent should not be sought before information is shared. Practitioners will follow Torbay Safeguarding Children Partnership (TSCP) procedures when making a referral and advice sought if there is a lack of clarity about whether or not parental consent is needed before making a referral due to safeguarding concerns.

### **Staff/volunteers/Parents/carers access to records**

The procedure below is followed should parents request access to any confidential records held on their child and family: -

- Any request by a parent or a person with parental responsibility to see a child's personal file must be made in writing to the manager.
- Any request by a staff member/volunteer to see their personal file must be made in writing to the manager.
- The manager informs the chairperson of the management committee and sends a written acknowledgement.
- The Pre-school agrees to provide access within 14 working days, although this may be extended.
- A file is prepared for viewing by the manager and chairperson.
- All third parties are written to, stating that a request for disclosure has been received and asking for their permission to disclose to the person requesting the information. Copies of these letters are retained on file.
- 'Third parties' include all family members who may be referred to in the records.
- 'Third parties' also includes workers from any other agency, including social services, the health authority and so on. Although it is usual for agencies to refuse consent to disclose, preferring the individual to go directly to them.
- All the consents, or refusals to disclose received will be attached to the copy of the request letter.
- The complete file is photocopied.
- The manager and chairperson of the committee go through the file and remove any information with a thick black marker, which a third party has refused consent to disclose.
- The remaining information will contain the information recorded by the setting, giving details of the work initiated and followed by the practitioner in relation to the confidential matters. This information is photocopied for the parents who are then invited in to discuss the contents.
- Legal advice may be sought before sharing a file, especially where the parent has possible grounds for litigation against the setting or another 'third party' agency.

Confidential policy continued.....

### **Subject access request (SAR)**

A subject access request (SAR) is a request you can make to find out what information St.Marychurch Pre- School holds about you (your “personal data”) You can make an SAR to find out:

- what personal data St.Marychurch Pre-School holds about you
- how they are using it
- who are they are sharing it with
- where they got your data from.

You can also ask St.Marychurch PreSchool to give you copies of your personal data. This can be useful if you are thinking about making a complaint or starting a legal case against the organisation. The right to make an SAR comes from the UK General Data Protection Regulation (UK GDPR).

### **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.

### **Exceptions**

GDPR enables information to be shared lawfully within a legal framework. The Data Protection Act 2018 balances the right of the person about whom the data is stored with the possible need to share information about them.

The Data Protection Act 2018 contains ‘safeguarding of children and individuals at risk’ as a processing condition enabling ‘special category personal data’ to be processed and to be shared. This allows practitioners to share without consent if it is not possible to gain consent, if consent cannot be readily gained, or if gaining consent would place a child at risk.

Confidential information may be shared without authorisation – either from the person who provided it or to whom it relates, if it is in the public interest and it is not possible or reasonable to gain consent or if gaining consent would place a child or other person at risk. The Data Protection Act 2018 enables data to be shared to safeguard children and individuals at risk. Information may be shared to prevent a crime from being committed or prevent harm to a child. Information can be shared without consent in the public interest if it is necessary to protect someone from harm, prevent or detect a crime, apprehend an offender, comply with a Court Order or other legal obligation or in certain other circumstances where there is sufficient public interest.

Sharing confidential information without consent is done only in circumstances where consideration is given to balancing the needs of the individual with the need to share information about them.

## **Obtaining consent**

Consent to share information is not always needed. However, it remains best practice to engage with people to try to get their agreement to share where it is appropriate to do so safely.

Settings are not obliged to report suspected benefit fraud or tax evasion committed by families; however, they are obliged to tell the truth if asked by an investigator.

Parents who confide that they are working while claiming should be informed of this and should be encouraged to check their entitlements to benefits, as it may be beneficial to them to declare earnings and not put themselves at risk of prosecution.

## **Consent**

Parents have the right to know that any information they share will be regarded as confidential. They should also be informed about the circumstances and reasons for the setting being under obligation to share information.

Parents are advised that their informal consent will be sought in most cases, as well as the circumstances when consent may not be sought, or their refusal to give consent overridden.

Where there are concerns about whether, or not to gain parental consent before sharing information, for example when making a Channel or Prevent referral the manager will inform the committee for clarification before speaking to the parents.

Consent must be informed – that is the person giving consent needs to understand why information will be shared, what will be shared, who will see the information, the purpose of sharing it and the implications for them of sharing the information.

## **Separated parents**

Consent to share need only be sought from one parent. Where parents are separated, this would normally be the parent with whom the child resides.

Where there is a dispute, this needs to be considered carefully.

Where the child is cared for, the local authority as ‘corporate parent’ may also need to be consulted before information is shared.

## **Age for giving consent**

A child may have the capacity to understand why information is being shared and the implications. For most children (for under the age of eight) at the setting, consent to share is sought from the parent, or from a person who has parental responsibility.

St Marychurch Pre-school is registered with the Information Commissioner’s Office (ICO). Practitioners are expected to follow guidelines issued by the ICO at <https://ico.org.uk/for-organisations/gidance-index/>

Practitioners should follow the guidance including Working Together to Safeguard Children (DfE2018) Information sharing: Advice for Practitioners Providing Safeguarding Services to Children, Young People, Parents and Carers 2018 and What to do if you're Worried a Child is being Abused (HMG 2015)

### Legal Framework

- Data Protection Act 2018
- Human Rights Act 1998

Signed: \_\_\_\_\_

Position: Chairperson

Dated: \_\_\_\_\_

We aim to provide a safe, stimulating, caring, happy Pre-school where all children and their families are welcome. We provide a curriculum based on the Early Years Foundation Stage using individual children's interest and needs.