Service Children's Education

Designated Seniors Newsletter

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Confidentiality, handling and transfer of records when there are safeguarding issues

A frequently asked question by schools is what should happen to safeguarding records when a pupil transfers to another school, particularly when those records are historical.

All professionals have a statutory duty to safeguard and promote the welfare of children, and a duty to disclose information where failure to do so would result in a child or children or others suffering from neglect, physical, sexual or emotional abuse.

As a **basic principle** all pupil records should be transferred to the new school by the most secure method possible. SCE recommends that this should be by Royal Mail Special Delivery which ensures that receipt is acknowledged. Where the new school is not immediately known, reasonable effort should be made to trace the whereabouts of the pupil and transfer appropriate records. Where this process fails, residual records should be sent securely to HQ SCE for secure storage.

It is important to underline that data protection law does not stand in the way of using or sharing personal information about a child (and sometimes about others) where a real need exists. Consequently data protection should never be used as an excuse for failure to protect a child from real risk of harm.

Where data protection issues are less clear is where the concerns focus upon the welfare of children, rather than on their protection. Child welfare and child protection, although related, are distinct. While child protection deals with around 50,000 individuals at any one time, broader welfare concerns encompass some three to four million. As a result this protection/welfare boundary underlines the importance of ensuring clarity about the purposes for which information about a child or family is collected and used.

Personal information about children and families kept by professionals and agencies should not generally be disclosed without the **consent** of the subject. Where there is a defined overriding public interest in supplying the information, for example for the prevention and detection of crime, information can be disclosed without consent being sought.

When disclosing information – particularly without consent - the key is always to limit the extent of the disclosure to that which is necessary to achieve the aim of disclosure i.e. to protect the child.

So, as an underlying principle, the law does not prevent individual sharing of information with other practitioners to assist in safeguarding a child if:

- those likely to be affected consent; or
- the public interest in safeguarding the child's welfare overrides the need to keep the information confidential; or

- disclosure is required under a court order or other legal obligation.

The key factor in deciding whether or not to disclose confidential information is proportionality (i.e. is the proposed disclosure a proportionate response to the need to protect the child's welfare?). The amount of confidential information disclosed and the number of people to whom it is disclosed should be no more than is necessary to meet the public interest in protecting the health and well-being of the child.

The following **key points** should be considered whenever dealing with Child Protection and Safeguarding Records.

- You should explain to children, young people and families – openly and honestly - what and how information will or could be shared and why. The exception to this is where you consider that to do so would put someone at risk of serious harm or would impede the prevention, detection or prosecution of a crime.
- You must always consider the safety / welfare of a child or young person when making decisions to share information about them: the child / young person's safety / welfare must always be the overriding consideration.
- You should wherever possible respect the wishes and seek consent of children, young people and / or families when making decisions to share information about them. You may still share information if, in your professional judgement, there is sufficient need in the public interest to override the lack of consent.
- You should seek advice from HQ SCE (P&FS) whenever you are in doubt and especially where that doubt relates to concerns about possible significant harm to a child or young person or serious harm to others.
- You should ensure that the information you share is accurate and up-to-date, necessary for the purpose for which you propose to share it, and is shared securely with only those who need to see it. Third-party information – such as that generated by other Agencies (health and social services) must be removed or redacted.
- You should always keep a record of your decision regardless of whether it is to share that information or not. Not only is this good practice for data protection purposes, but it will also serve as an excellent simultaneous note of your decision making process months down the line.
- Remember that as a teacher you have a **statutory duty** to safeguard and promote the welfare of children.

This guidance should be read in conjunction with

- SCE Guidance on Record Keeping and Management of Child Protection Information issued in September 2011
- SCE Guidance to Managing and Keeping Records issued in January 2012
- Pupil Record Management in SCE Schools – an aide memoir issued in March 2012
- Records Management Society Toolkit for Schools (Version 4) – issued in May 2012
- DfES Information Sharing: Practitioners' Guide – reprinted March 2009

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