

# Derby and Derbyshire Safeguarding Children Boards' Information Sharing Agreement Version 3.0

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## Version control

<b>Document to be read in conjunction with the <a href="#">Derby and Derbyshire Safeguarding Children Procedures</a> (NB : this document replaces all other Derby or Derbyshire Safeguarding Children Board Information Sharing Agreements)</b>				
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This specific information sharing agreement forms a second tier agreement under the overarching [Derbyshire Partnership Forum Information Sharing Protocol](#) and replaces any former agreements by the parties named for the described purpose(s).

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## **INFORMATION SHARING AGREEMENT BETWEEN PARTNERS**

### **1. List of Partners to the Agreement**

1.1 The partners committed to this agreement are:

- Derbyshire Constabulary
- Police and Crime Commissioner
- Derbyshire County Council
- Derby City Council
- Derby and Derbyshire Clinical Commissioning Group
- Tameside and Glossop Clinical Commissioning Group
- Derbyshire Healthcare Foundation Trust
- Derbyshire Community Health Service Foundation Trust
- Chesterfield Royal Hospital Foundation Trust
- University Hospitals of Derby and Burton NHS Foundation Trust
- DHU Healthcare
- East Midlands Ambulance Service
- Derbyshire, Leicester, Nottingham and Rutland Community Rehabilitation Company
- National Probation Service
- education
- Children and Family Court Advisory Support Service (CAFCASS)
- independent lay members
- voluntary sector
- Community Safety
- housing providers
- Chesterfield Borough Council
- Amber Valley District Council
- Bolsover District & North East Derbyshire District Councils
- South Derbyshire District Council
- Derbyshire Dales District Council
- Erewash Borough Council
- Derbyshire Fire and Rescue Service
- Children and Young People's Network
- Derbyshire CGL

1.2 All partners will act as Data Controllers in this agreement for the data they share with each other, and the Derby & Derbyshire Safeguarding Children Boards local authorities, i.e. Derby City Council and Derbyshire County Council will be the Data Controllers for the data held by the boards. All partners will be responsible for ensuring:

- realistic expectations on information sharing prevail from the outset
- ethical standards are maintained
- a mechanism exists by which the flow of information can be controlled
- appropriate training is provided
- adequate arrangements exist to test adherence to the Agreement and

- data protection and other relevant legislative requirements are met

## 2. Background and Scope of Agreement

- 2.1 The objective of this agreement is to facilitate lawful and secure information sharing between members of the Derby and Derbyshire Safeguarding Children Board's to support the work they do to keep the children and young people of Derbyshire safe.
- 2.2 The agreement takes into account the effect of relevant legislation, statutory guidance and common law, upon the way in which information is shared and used. The relevant legislation is set out in the statutory guidance issued by the DfE called [Working Together to Safeguard Children 2018](#). Partners to this agreement are also expected to comply with the [General Data Protection Regulation](#), the [Data Protection Act 2018](#), the [Human Rights Act 1998](#) and common law duties of care and confidentiality in conjunction with this guidance.

## 3. Purpose and Legal Basis for Information Sharing

- 3.1 The purpose of this Agreement is to facilitate the sharing of information for the safeguarding of children under the legislative and common law provisions outlined in the statutory guidance issued by the DfE called [Working Together to Safeguard Children 2018](#).

Working Together to Safeguard Children 2018 states that:

- "... all organisations and agencies should have arrangements in place that set out clearly the processes and the principles for sharing information. The arrangement should cover how information will be shared within their own organisation/agency; and with others who may be involved in a child's life;
- ... all practitioners should not assume that someone else will pass on information that they think may be critical to keeping a child safe. If a practitioner has concerns about a child's welfare and considers that they may be a child in need or that the child has suffered or is likely to suffer significant harm, then they should share the information with local authority children's social care and/or the police. All practitioners should be particularly alert to the importance of sharing information when a child moves from one local authority into another, due to the risk that knowledge pertinent to keeping a child safe could be lost;
- ... all practitioners should aim to gain consent to share information, but should be mindful of situations where to do so would place a child at increased risk of harm. Information may be shared without consent if a practitioner has reason to believe that there is good reason to do so, and

that the sharing of information will enhance the safeguarding of a child in a timely manner. When decisions are made to share or withhold information, practitioners should record who has been given the information and why.

#### *Common law duty of care*

There is a common law duty of care to protect the public which may involve sharing personal data where it is necessary to prevent harm.

#### *Common law duty of confidentiality*

The general position is that, if information is given in circumstances where it is expected that a **duty of confidence** applies, that information cannot normally be disclosed without the information provider's consent.

This means that anyone proposing to disclose information not publicly available and obtained in circumstances giving rise to a duty of confidence, will need to establish whether there is an overriding justification for so doing. If not, it is necessary to obtain the informed consent of the person who supplied the information. This will need to be assessed on a case by case basis and legal advice should be sought in any case of doubt.

Consent may be defined as "...any freely given, specific and informed indication of his/her wishes by which the Data Subject signifies his/her agreement to Personal Data relating to him/her being processed".

Information may be shared without consent if a practitioner is unable to or cannot reasonably be expected to gain consent from the individual, or if to gain consent could place the child at risk, and the sharing of the information will enhance the safeguarding of a child in a timely manner. When decisions are made to share or withhold information, practitioners should record who has been given the information and why

Partners to this agreement **will not be using consent** as the legal basis, as the **overriding justification**, under criteria described in the previous paragraph, is covered by one of the legal bases and one of the conditions stated in paragraph 3.4 of this agreement; which one used is dependent upon why information is being shared.

3.2 In addition to the above Derby and Derbyshire Safeguarding Children Boards (DSCBs), on occasion may request information from an organisation in order to fulfil their statutory functions to co-ordinate and ensure the effectiveness of safeguarding. This includes information to support quality assurance processes such as a multi-agency audit as well as learning reviews and serious case reviews (see 3.4 for legal basis).

3.3 The Derby and Derbyshire Safeguarding Partnership, which will replace the DSCBs in September 2019, may also require any person or organisation or agency to provide them with specified information to enable and assist the safeguarding partners to perform their functions to safeguard and promote the welfare of children

in their area, including as related to local and national child safeguarding practice reviews (see 3.4 for legal basis).

### Lawful Basis for Processing

3.4 Under the General Data Protection Regulation and the Data Protection Act 2018 the legal bases for sharing information between the Partners under this agreement have been identified as:

- Article 6(1) (c) processing is necessary for compliance with a legal obligation to which the controller is subject; or
- Article 6(1) (d) processing is necessary in order to protect the vital interests of the Data Subject or of another natural person.

3.5 In the case of Special Categories of Personal Data, partners must also meet Article 9 condition by virtue of subsection 2 (a), (b), (c), (g) or (h):

The processing is necessary:

- Article 9(2) (b) for the purposes of carrying out the obligations and exercising specific rights of the Controller or of the Data Subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the Data Subject;
- Article 9(2) (c) in order to protect the vital interests of the data subject or another natural person in a case-  
i) where the data subject is physically or legally incapable of giving consent;
- Article 9(2) (g) for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;
- Article 9(2) (h) for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3 of Article 9.

The [Working Together to Safeguard Children 2018](#) statutory guidance states which sections in the following Acts the above legal basis and condition relates to:

- Children Act 1989

- Children Act 2004
- Education Act 1996
- Education Act 2002
- Education and Skills Act 2000
- Legal Aid, Sentencing and Punishment of Offenders Act 2012
- Police Reform and Social Responsibility Act 2011
- Childcare Act 2006
- Crime and Disorder Act 1998
- Housing Act 1996

#### **4. Information to be shared**

4.1 This agreement enables partners to share the following personally identifiable information, for the purpose outlined in the previous section, relating to relevant children, their family members and relevant significant others with the DSCBs and partners to this agreement.

- Name
- Address
- Date of Birth/Age
- Gender
- Ethnicity

4.2 Also, if necessary, this agreement enables relevant information about the above individuals held by local authorities, the police, probation agencies, health agencies and other agencies who are partners to this agreement to be shared between them for the same purpose.

Although this is not an exhaustive list, examples of relevant information may include:

- Personal and sensitive information which identifies the alleged victim(s) or alleged perpetrator(s) of abuse or neglect e.g. name, date of birth, address; sensitive information about the alleged victim(s) or alleged perpetrator(s) of abuse or neglect e.g. gender, religion, ethnicity
- Reasons for concerns and details of the alleged concerns e.g. type of abuse, location of abuse, levels of risk or urgency.
- Information about the physical and or mental health of the alleged victim(s) or alleged perpetrator(s) e.g. mental capacity, communication needs
- Reports of any medical or social care assessments or examinations undertaken as part of the safeguarding procedures e.g. eligibility for community care, psychiatric assessment
- Personal data which identifies professionals involved with the alleged victim(s) or alleged perpetrator(s)
- Personal data which identifies other people who may be at risk

- Historical information held in records about the alleged victim(s) or alleged perpetrator(s) that may be relevant to the current concern
- Name and contact details of the referrer (unless they have stated they wish to remain anonymous and this anonymity would not have a detrimental impact upon the protection process)
- Name of employer or organisation if the concern relates to a paid worker or volunteer of a service provider

- 4.3 The agreement also concerns aggregated data (e.g. statistics) which may be shared. In these situations, anonymised information should be used.
- 4.4 The board may share the personally identifiable data obtained from partners with Independent Report Authors commissioned by Board, under confidentiality agreements compliant with data protection legislation to write reports.
- 4.5 The board will only share anonymised and/or pseudonymised data with national bodies such as OFSTED when sharing information on reviews. All reviews published in public domain will be anonymised.
- 4.6 Information shared may also be used for planning and research purposes by partner organisations. This information must be anonymised or pseudonymised if used for these purposes as this will be a secondary use of the information.
- 4.7 If large volumes of data are provided for research and/or planning by partner organisations, as a matter of courtesy the outcome of that research/planning should be provided to the organisation(s) supplying the data.
- 4.8 Derbyshire County Council and Derby City Council are under a duty to protect the public funds they administer and to this end may use information provided by partners for the prevention and detection of fraud however, only with the prior agreement of the partners who have provided the information.
- 4.9 The Councils named in section 4.8 may share information with other bodies responsible for administering public funds for the purpose outlined in section 4.8, once again only with the prior agreement of the partners who have provided the information.
- 4.10 Information will be shared either via secure web portals managed by Partners or industry standard secure email such as Egress and MS Office 365. In instances where information needs to be shared via alternative means, an appropriate secure method of transfer will need to be agreed beforehand by Partner organisations.

There are a number of alternative options for secure data transfer, including:

- Encrypted files with industry standard security (e.g. 7zip)
- Encrypted portable devices
- Secure e mail with industry standard security (e.g. TLS)

- Confirmed delivery post

- 4.11 Partners can either include the operational data sharing arrangements under this agreement with Partner agencies as an appendix to this agreement or create separate local information sharing agreements with Partner agencies. An example of a local data sharing agreement is the Derbyshire Constabulary – Information Sharing Agreement for Working Together to Safeguard Children.
- 4.12 All Partners to this agreement will update their privacy notices to reflect data sharing under this agreement and its legal bases.

## **5. Data Quality, Retention, Storage and Disposal under this Agreement**

- 5.1 Information shared under this agreement discovered to be inaccurate, out-of-date or inadequate for the purposes of this agreement should be notified to the source Partner Data Controller; who will be responsible for correcting the data and notifying all other recipients of the information who must make sure the correction is made.
- 5.2 Partners will ensure that all information shared under this agreement, regardless of format, will be securely retained, managed and stored in accordance with their own local policies and procedures to ensure compliance with the General Data Protection Regulation, Data Protection Act 2018 and any subsequent relevant legislation.
- 5.3 Partners will ensure information shared under this agreement is reviewed regularly in accordance with their own data quality policies and procedures.
- 5.4 Partners will make sure that all information shared under this agreement, regardless of format, will be destroyed in accordance with their own local policies and procedures relating to retention and disposal of record to ensure compliance with the General Data Protection Regulation, Data Protection Act 2018 and any subsequent legislation.
- 5.5 Partners recognise that the data controller for the business considered at the Derby and Derbyshire Safeguarding Children boards is Derby City Council and Derbyshire County Council respectively, and a record of all matters discussed will be held by them.

## **6. Access to Data and Security under this Agreement**

- 6.1 The partners to this agreement have policies and systems in place to ensure information held on its information systems is held securely and in compliance with the security requirements of the General Data Protection Regulation, Data Protection Act 2018 and any subsequent legislation applicable to the processing of the personal information shared under this agreement.
- 6.2 Each partner will make sure they take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

In particular, each partner must make sure they have procedures in place to do everything reasonable to:

- make accidental compromise or damage unlikely during storage, handling, use, processing transmission or transport
- deter deliberate compromise or opportunist attack
- dispose of or destroy the data in a way that makes reconstruction unlikely
- promote discretion to avoid unauthorised access
- maintain a record of personal data and processing activities regarding the data.

6.3 Signatory parties are expected to train their relevant staff and promote awareness of the major requirements of information sharing, including responsibilities in confidentiality and data protection.

6.4 Access to information subject to this agreement will only be granted to those professionals who 'need to know' to effectively discharge their duties.

## **7. Handling of complaints, information requests or breaches of this Agreement**

7.1 The Partners to this agreement will, in the event of a personal data breach or breach of confidentiality, take steps to notify the Data Controller and relevant organisations' Data Protection Officer(s) (DPO) no later than 48 hours after discovered. The Data Controller has the responsibility to notify the Information Commissioner's Office (ICO) of a serious breach within 72 hours of any signatory organisation becoming aware of the breach.

7.2 Partners will make sure that all breaches of agreement, internal discipline, security incidents or malfunctions will be managed in accordance with their own local policies and procedures; which should comply with the General Data Protection Regulation, Data Protection Act 2018 and any subsequent legislation.

7.3 Requests relating to access to personal information (Subject Access Requests) shared under this agreement or any other requests relating to individual rights of data subjects under the General Data Protection Regulation, Data Protection Act 2018, Freedom of Information Act 2000 and any subsequent legislation will be the responsibility of the Partner receiving the request and handled under their local policies and procedures. If the request relates to information shared by other Partners, they should be consulted before any information that has been shared by them is disclosed, amended or destroyed.

7.4 The parties agree to undertake reasonable efforts to liaise with the other party or parties, as necessary to agree on relevant exemptions from disclosure.

7.5 Complaints relating to the information shared under this agreement will be the responsibility of the Partner receiving the complaint under their local policies and

procedures. Partners should be consulted over responses to a complaint if it relates to information they have shared.

7.6 Each Partner will keep each of the other Partners fully indemnified against any and all costs, expenses and claims that arise out of any breach of this agreement by their staff, agents, contractors or data processors and in particular, but without limitation, the unauthorised or unlawful loss, theft, use, destruction or disclosure by the offending Partners or their sub-contractors, data processors, employees, agents or any other person within the control of the offending Parties of any data obtained in connection with this agreement.

## **8. Commencement and Termination of the Agreement**

8.1 This agreement shall take effect from the date that members of the Derby and Derbyshire Safeguarding Children Board approve this agreement and will continue in force until this agreement is terminated under one of the terms below.

Notification of termination and/or completion by either party must be given in writing with at least 30 days' notice.

- Derby and Derbyshire Safeguarding Children Boards replace this agreement with an updated version.
- Derby and Derbyshire Safeguarding Children Boards agree to end this agreement.

## **9. Monitoring, Review and Dissemination of the Agreement**

9.1 Compliance with the agreement will be monitored by the Derbyshire Safeguarding Children Boards of both local authorities.

9.2 The agreement will be reviewed every three years, unless material changes to processes, organisation or legislation make earlier review necessary. Any partner can request changes by their nominated representative from Derby and Derbyshire Safeguarding Children's Boards in consultation with Partners.

9.3 The Derby and Derbyshire Safeguarding Children's Boards are responsible for dissemination of this agreement to Partners and other stakeholders

## ***Appendices***

Appendix 1 Signatories List

