



Special Educational Needs (SEN) and Disabilities Information Sharing Agreement

Based on the Derbyshire Partnership Forum Information Sharing Protocol

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1. List of Partners to the agreement

1.1. The partners committed to this Agreement are:

- Chesterfield Royal Hospital
- University Hospitals of Derby and Burton
- Derbyshire Community Health Services
- Derbyshire Healthcare NHS Foundation Trust
- Stockport NHS Foundation Trust
- Tameside and Glossop Integrated Care NHS Foundation Trust.
- Derby and Derbyshire Clinical Commissioning Group
- Tameside and Glossop Clinical Commissioning Group
- Derbyshire County Council (and the Derbyshire schools/academies it has data sharing agreements with)
- Derby City Council (and the Derby City schools/academies it has data sharing agreements with)

All partners are to be considered as Data Controllers in their own right for the purposes of this Agreement.

1.2. It will be the responsibility of these Parties to make sure that they:

- have realistic expectations from the outset
- maintain ethical standards
- have a process by which the flow of information can be controlled
- provide appropriate training
- have adequate arrangements to test compliance with the agreement
- meet Data Protection Act 2018 (DPA), General Data Protection Regulation (GDPR) and other relevant legislative requirements.

2. Background and scope of the Agreement

2.1. Purpose of Information Sharing

The purpose of the agreement is to enable sharing of information between Partners to enable the completion of Education, Health and Care Plans (EHCPs) and compliance with the structure of EHCPs as outlined in the 'Special Educational needs and Disability Code of Practice – Section 9.62'.

2.2. Scope of the agreement

The Agreement covers the sharing of Personal Data about data subjects for the purpose of completing individual EHCPs and the Agreement covers sharing for any of the purposes listed in Section 4: 'Purposes and legal basis for Sharing Information'.

3. Information to be shared

3.1. Data to be shared

Partner agencies involved in completing individual EHCPs will share the following child/young person identifiers, address and contact information:

- Surname
- Forename
- Gender
- Date of Birth
- Child/Young Person's Address Line 1
- Child/Young Person's Address Line 2
- Child/Young Person's Address Line 3
- Child/Young Person's Address Line 4
- Child/Young Person's Address Line 5
- Child/Young Person's Address Postcode
- Name of Setting/Educational Establishment Child/Young Person attends
- Names of persons with parental responsibility
- Unique Pupil Number (UPN)
- NHS Number
- Ethnicity (aggregated datasets, for the purpose of research and analysis)

Partner organisations will share relevant information required to complete individual EHCPs. The structure of the EHCP is set out in the "Special Educational needs and Disability code of practice: 0 to 25 years", which must include as a statutory minimum¹ a number of sections as follows:

- Section A: The views, interests and aspirations of the child and his or her parents or the young person.
- Section B: The child or young person's special educational needs.
- Section C: The child or young person's health needs which are related to their SEN.
- Section D: The child or young person's social care needs which are related to their SEN or to a disability.
- Section E: The outcomes sought for the child or the young person. This should include outcomes for adult life. The EHC plan should also identify the arrangements for the setting of shorter term targets by the early year's provider, school, college or other education or training provider.
- Section F: The special educational provision required by the child or the young person.

¹ Section 9.62 - Special educational needs and disability code of practice: 0 to 25 years (2015)

- Section G: Any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN. Where an Individual Health Care Plan is made for them, that plan should be included.
- Section H1: Any social care provision which must be made for a child or young person under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970.
- Section H2: Any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN. This will include any adult social care provision being provided to meet a young person's eligible needs (through a statutory care and support plan) under the Care Act 2014.
- Section I: The name and type of the school, maintained nursery school, post-16 institution or other institution to be attended by the child or young person and the type of that institution (or, where the name of a school or other institution is not specified in the EHCP, the type of school or other institution to be attended by the child or young person).
- Section J: Where there is a Personal Budget, the details of how the personal budget will support particular outcomes, the provision it will be used for including any flexibility in its usage and the arrangements for any direct payments for education, health and social care. The special educational needs and outcomes that are to be met by any direct payment must be specified.
- Section K: The advice and information gathered during the EHCP needs assessment must be attached (in appendices). There should be a list of this advice and information.
- In addition, where the child or young person is in or beyond year 9, the EHCP must include (in sections F, G, H1 or H2 as appropriate) the provision required by the child or young person to assist in preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society.

Additionally, background information about the child/young person will be included. This section is intended to personalise the EHCP and may include photos or videos that further help to explain the likes and aspirations of the child/young person.

If a child/young person has a personal budget, Derbyshire County Council and Derby City Council will share a breakdown of the spending with partners that have provided funding for the account in order to support the recharge process between partners.

3.2. Terms of use of the information

The information shared will be used to support the creation of EHCPs for individual children/young people. Practitioners will contribute professional assessments and opinions into the plan, which, once agreed provides a statutory statement of the support for the child/young person.

The information will be shared with all relevant practitioners who are contributors to the plan or delivering services included in the plan.

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.

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.

Derbyshire County Council and Derby City Council are under a duty to protect the public funds we 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. The Councils may share information with other bodies responsible for administering public funds for this purpose, once again only with the prior agreement of the partners who have provided the information and where permitted by the relevant legislation.

3.3. Exchange of Information

Information will be shared via a secure web portal or industry standard secure email such as Egress and 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 options for alternative secure data transfer, including but not restricted to the following:

- Web portals with industry standard security
- Partner agency secure e mail solutions (e.g. nhs.net)
- Secure email solutions with industry standard security (e.g. Egress and MS Office 365)
- Encrypted files with industry standard security (e.g. 7zip)
- Confirmed delivery post

4. Purposes and legal basis for information sharing

4.1. Purpose for sharing information

The main purpose for sharing information is to enable information to be shared between Partners to meet requirements outlined in Part 3 of The Children and Families Act 2014:

- Partners are required to share information for creating and reviewing EHCPs along with any information required for preparing EHCP tribunal cases.
- Local authorities must ensure that parents, children and young people are involved in discussions and decisions about every aspect of their care and support, including planning outcomes and agreeing services & activities to meet those outcomes.

- The entitlement to EHCPs is extended to all disabled 18 to 25 year olds, including those no longer in education.
- A child or Young Person with an EHCP will have the right to request a personal budget for their support. A personal budget is an amount of money provided to the family to enable them to directly purchase all or some of the provision set out in their EHCP.
- Every council will be required to publish a detailed directory of what local support there is available for children and young people with SEND – called the Local Offer. The Local Offer will provide clear and accurate information about local education, health and care services.
- Information will also be used to inform strategic delivery and funding decisions as well as for audit and quality assurance purposes, including multi agency audits and statutory inspections.

4.2. Legal Basis for Sharing Information

4.2.1 Children under compulsory school age

In relation to children who are under compulsory school age, the legal basis for sharing information between the Parties has been identified as:

- Article 6(1) (c) processing is necessary for compliance with a legal obligation to which the controller is subject
- Article 9 (2)(g) processing is necessary 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.

Under s. 23 Children and Families Act 2014, where a clinical commissioning group, NHS trust or NHS foundation trust form the opinion that the child has (or probably has) special educational needs or a disability, they must bring their opinion to the attention of the appropriate local authority.

Furthermore, part 3 of the Children and Families Act 2014 places a duty on Local Authorities and Health bodies to work collaboratively with a view to making sure that services work together where this promotes children and young people's wellbeing or improves the quality of special educational provision (Section 25 of the Children and Families Act 2014). S. 28 of the Children and Families Act 2014 requires the local authorities to co-operate with local partners including CCGs, NHS Trusts and NHS Foundation Trusts to exercise the local authority functions under this Part.

Schedule 1 Part 2 paragraph 6 Data Protection Act 2018 applies:

The processing is necessary for the purpose of the exercise of a function conferred on a person by an enactment or rule of law - Children and Families Act 2014 Part 3 – and is necessary for reasons of substantial public interest.

The parent/carer with parental responsibility for the child/young person that requires an EHCP, or, if appropriate, the child/young person requiring the EHCP will be advised of the reasons for the proposed share of information.

4.2.2 Children of compulsory school age

In relation to children of compulsory school age (as defined in s. 8 Education Act 1996), the clinical commissioning group, NHS Trust or NHS foundation trust will only share information where it is fair, lawful and transparent to do so. The basis for sharing will be explicit consent of the child/young person (or their parent or guardian) (Article 6(1)(a) GDPR and article 9(2)(a) for the sharing of special category data).

In circumstances where consent is not obtained/refused consideration should be given to whether a referral should be made under a safeguarding duty. The appropriate legal basis for processing in these circumstances would be legal obligation – s. 17 Children Act 1989 – the duty to safeguard and promote the welfare of children within the area who are in need. Special category data would be processed in accordance with article 9(2)(g) – processing is necessary for reasons of substantial public interest.

4.2.3 Common Law Duty of Confidentiality

Information shared between medical professionals will be subject to the common law duty of confidentiality. Sharing between members of the care team will be based on implied consent where there is a legitimate interest to do so. Sharing between partners to this agreement will be shared on the basis of explicit consent only, except for Children under compulsory school age where the Common Law Duty of Confidentiality is set aside by the Children's and Families Act.

4.2.3 Privacy Notices

All parties will ensure their privacy notices are updated to reflect terms of this agreement.

4.3. Other legislation which has an impact on the Agreement

Children and Families Act 2014 (Part 3)

<http://www.legislation.gov.uk/ukpga/2014/6/part/3/enacted>

SEND Code of Practice

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

5. Data Quality, Retention, Storage, Review and Disposal

5.1. Data quality

All partners will ensure compliance with their internal data quality policy, procedures and good practice. Information, which is inaccurate, out-of-date or inadequate for the purposes of the agreement will be notified to the data controller who will be responsible for correcting the data and informing the other Partners to maintain data integrity.

Information discovered to be inaccurate, out-of-date or inadequate for the purpose should be notified to the 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. Retention of data

Partners will make sure that all data, regardless of format, will be managed in accordance with their own local policies and procedures to ensure compliance with the Data Protection Act 2018.

Information relating to EHCPs stored on Derbyshire County and Derby City Council systems will be retained in accordance with their local policies.

5.3. Storage of data

The information will be stored in a secure Local Authority case management system in accordance with its Data Security Policies and in compliance with relevant data protection legislation.

5.4. Review of data

Data will be reviewed in accordance with partner data quality policies and procedures, and in line with the review process within the SEND Code of Practice.

5.5. Disposal of data

Partners will make sure that all data, regardless of format, will be destroyed 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 legislation.

Information relating to EHCPs stored on Derbyshire County Council systems will be destroyed in accordance with its local policy.

5.6. Sub-processor and Use of Third Parties

If any Data Controller appoints a sub-processor the relevant Data Controller will ensure that, prior to any processing taking place, that there is a written contract in place between the Data Controller and the Sub-Processor that specifies the what the Sub-Processor's processing activities will be and imposes on the Sub-Processor appropriate terms.

6. Access and Security

The partners to this agreement acknowledge the security requirements of the General Data Protection Regulation and Data Protection Act 2018 applicable to the processing of the information subject to this agreement.

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

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 the Agreement

7.1. Handling of data breaches

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) as soon as possible. The Data Controller has the responsibility to notify the ICO of a serious breach within 72 hours of any signatory organisations becoming aware of the breach.

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 to ensure compliance with the General Data Protection Regulation and Data Protection Act 2018.

7.2. Indemnity to the Agreement

Each Party will keep each of the other Parties fully indemnified against any and all costs, expenses and claims that arise out of any breach of this ISA by their staff, agent, contractors or data processors and in particular, but without limitation, the unauthorised or unlawful loss, theft, use, destruction or disclosure by the offending Parties or its 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 ISA.

7.3. Handling of complaints

All complaints relative to this agreement will be notified to the designated DPO of the relevant organisation in accordance with their respective policy and procedures.

7.4. Handling of requests for information under Data Protection / FOI

The data may only be shared with the parties to this agreement and will not be shared with any other third party or any other Authority without the explicit consent of the relevant Data Controller.

Any Partner who receives a request for information under the subject access provisions of the General Data Protection Regulation or Freedom of Information Act 2000, must progress it in accordance with its own internal procedures.

However, it is expected that Officers in the originating organisation will liaise with Officers as necessary to agree on relevant exemptions from disclosure.

8. Commencement and Termination of the Agreement

8.1. Commencement of the Agreement

This ISA shall take effect from the date that the Parties fix their signatures below and shall continue in force until this ISA is terminated under Section 8.2 below.

8.2. Termination of the Agreement

Any Party may terminate this ISA at any time provided they give a minimum of 30 days' notice in writing to the other Parties.

Any Party can suspend this ISA for 30 days if they consider that security arrangements have been compromised. Such suspension arrangements are intended to allow the affected Party the opportunity to seek a resolution and cause any remedial actions to be completed. In the event that agreement is not reached, the ISA will be terminated in writing with full explanation to the Parties concerned.

The obligations of confidentiality imposed on the Parties by this ISA shall continue in full force and effect after the expiry or termination of this ISA.

9. Monitoring, review and dissemination of the Agreement

9.1. Monitoring of the Agreement

The agreement will be monitored and disseminated to partners through the SEND Strategic Boards of both local authorities. IG representatives from all partners will be involved in the review process and consulted on any changes

9.2. Review of Agreement

All Parties agree to review the Agreement every three years or when there is any major change to the data, process, relevant legislation or Parties to the ISA. The Parties agree to notify a representative of the Data Controller of any requirements to review the ISA and it will be the responsibility of the Data Controller to instigate the review.

9.3. Dissemination of the Agreement

All Parties will disseminate copies of this ISA to all relevant staff and, on request, to the data subjects of the ISA process and will ensure that appropriate training is provided to all relevant staff. Copies of the agreement will be held on the Local Offer websites.

10. Signatories

On Behalf of Derbyshire SEND Strategic Board

Name & Title/Role Signature Date

On behalf of Derby City SEND Strategic Board

Name & Title/Role Signature Date