



**Inspiring Futures
Through Learning**

Inspiring Futures Through Learning
**Transfer and Retention of Safeguarding and Child Protection
Files**

January 2021 to September 2022

At Inspiring Futures through Learning, we are driven by our pursuit of excellence every day. We have high expectations of learning, behaviour and respect for every member of our community. We create independent, articulate thinkers and learners who have confidence in, not only their individual ambitions, but also those of the Academy and The Trust as a whole. We have collaboration at the heart of everything we do and our vision is to nurture exciting, innovative, outstanding Academies who embrace change and provide a world-class education for all it serves.

***Including all IFtL Schools, Milton Keynes Teaching School Alliance and Two Mile Ash Initial Teaching Training Partnership**

Policy name:		Transfer and Retention of Safeguarding and Child Protection Files
Version:		V1
Date relevant from:		January 2021
Date to be reviewed:		September 2022 <i>This policy will be reviewed every two years unless legislation dictates otherwise. Recent changes in Legislation will need to be read and used to review this Policy.</i>
Role of reviewer:		IFtL Data Protection Officer
Statutory (Y/N):		Y
Published on website*:		3C

Policy level**:	1
Relevant to:	All employees through all IFtL schools and departments
Bodies consulted:	Stone King Solicitors IICSA
Approved by:	
Approval date:	

Key:

*** Publication on website:**

IFtL website		School website	
1	Statutory publication	A	Statutory publication
2	Good practice	B	Good practice
3	Not required	C	Not required

**** Policy level:**

1. Trust wide:
 - This one policy is relevant to everyone and consistently applied across all schools and Trust departments with no variations.
 - o *Approved by the IFtL Board of Trustees.*
2. Trust core values:
 - This policy defines the values to be incorporated fully in all other policies on this subject across all schools and Trust departments. This policy should therefore form the basis of a localised school / department policy that in addition contains relevant information, procedures and / or processes contextualised to that school / department.
 - o *Approved by the IFtL Board of Trustees as a Trust Core Values policy.*
 - o *Approved by school / department governance bodies as a relevantly contextualised school / department policy.*
3. School / department policies
 - These are defined independently by schools / departments as appropriate
 - o *Approved by school / department governance bodies.*

This document is additional guidance and should be read in conjunction with the Milton Keynes Council Child Protection Record Keeping Guidance for Schools document and the IFtL Data Protection and Records management Policies.

1. Background and Context

There have been various discussions around the correct procedure relating to what happens to Child Protection and Safeguarding files once a pupil leaves an infant or a primary school for their next setting.

Much of this arises because there is no single set of guidance from the DfE or ESFA and the legislation can be interpreted in various ways.

Many of the people offering advice are not data protection specialists or lawyers so we have compiled this advice and shared with our solicitors, Stone King, to ensure that we are following the correct route.

We have also clarified the position regarding retention of data with the solicitors from the IICSA enquiry.

2. Retaining Safeguarding and CP Data

Under data protection law, information about individuals can be processed as long as the data controller or processor has a legal basis to do so.

While pupils are in our care, we have a legal obligation to protect them and, once they leave, we also have a legal obligation to ensure that protection is carried through into their new setting. This is why there is a legal duty placed on schools to transfer Safeguarding and CP data within 5 days and to engage in discussions relating to safeguarding and child protection with a pupil's new school earlier than this where appropriate.

Once that child has left our care, that legal basis for retaining the information ceases to exist. Unless we have a different legal basis to retain the data, we cannot keep a copy of Safeguarding and CP data.

The fifth data protection principle clearly states that personal data processed for any purpose, shall not be kept for longer than is necessary for that purpose.

As a Trust, we have decided that copies of Safeguarding and CP files can be retained for 12 months following transfer to allow schools to deal with any queries that may come in during a pupils settling in period but, beyond this date, copies should not be retained.

There are some exceptions to this which are detailed later in this document.

3. What if we need to refer to CP data in the future?

The GDPR is explicitly clear that 'what if' is not a legal basis for processing data. If we want to retain Safeguarding and CP data after a pupil has moved on to another school, we need a legal basis to do so that follows the regulation set out within the GDPR.

Should a legal issue arise, or a legal claim made against the school regarding an incident that occurred whilst the child was with us but the claim was made after the child has left the school, evidence sought from the file will be available from the actual file that travels with the child.

4. What about IICSA and the legal obligation to retain CP data?

The legal obligation placed on schools is not to destroy files. This legal obligation is discharged to the next school once a pupil transfers.

A copy of the CP file is not the CP file. Copies should be securely destroyed while the original file remains intact within the education system, following the pupil throughout their education.

This file must be retained by the final education setting that the child attends.

Destroying this file is currently an offence under s35 of the Inquiries Act 2005.

5. What if we keep copies anyway?

As well as the GDPR requiring a legal basis for retaining data, it also places an obligation on data controllers to ensure that any data stored is accurate and kept up to date. A Safeguarding and CP file, by its very nature, will go out of date if it does not follow the child.

As well as this, multiple copies of a file existing in several locations increase the risk of confidentiality breaches.

Ultimately, storing highly sensitive data without a justifiable legal basis in law for doing so, could lead to legal action against the school and the Trust.

6. Exceptions

There are some cases where we may need to retain a copy of a Safeguarding and CP file.

- If there are allegations against a member of staff, files relating to this must be retained for 10 years following the allegation or until the normal retirement age of the member of staff to which they relate - whichever is the longer period applies. After this period, retention should be reviewed to see whether further retention is appropriate or whether records can be securely destroyed. (N.B. Allegations that are found to be malicious must be removed from personnel files).
- If there is ongoing, or pending legal action relating to a child that we hold data on, a copy should be retained for the duration of the case, or until we are informed that we can dispose of it.
- Where there are sibling links and there is a crossover of information, it may be relevant for schools to retain a copy of files relating to pupils that have left, but where siblings still

remain at the school. These cases should be assessed on a case by case basis and steps taken to ensure that copy files are securely destroyed once they are no longer required (i.e. when siblings have left the school).

- Where children are classified as 'missing in education', schools may need to retain files until the child's 25th birthday. Advice should be sought from the local authority CME team.

7. IICSA Clarification

The IICSA enquiry places a legal duty on all schools to preserve all records relating to the care of children. Destruction of such records is currently an offence under s35 of the Inquiries Act 2005. This could relate to staff records as well as pupil records.

The enquiry does not place an obligation on schools to keep a copy of records that are being transferred and the duty of a primary phase school to preserve records is discharged to the next phase at the date of transfer of that pupil.

8. Summary

- Safeguarding and CP files should be transferred to a pupil's new school within 5 days of transfer
- We can retain a copy of the file for 12 months to ensure enquires during the settling in period can be addressed
- There are a limited number of other exceptions, detailed above, where a copy can be retained but, in general, the retained copy of the file should be destroyed after 12 months

This document must be read in the wider context of the Milton Keynes Council Child Protection Record Keeping Guidance for Schools document and the IFtL Data Protection and Records Management Policies.

This document was written by Jason Smith, DPO at IFtL, in conjunction with advice given by Stone King Solicitors and the Head of Information Management at IICSA.