

Data Sharing Agreement

Between

Staffordshire and West Midlands Probation Trust

And

Birmingham City Council
Corporate Strategy Team

Agreement ref:

This Agreement dated 30th September 2013 sets out the terms and conditions under which personal data held by Staffordshire and West Midlands Probation Trust and Birmingham City Council's Corporate Strategy Team ("CST") will be shared with each other. This Data Sharing Agreement is entered into with the purpose of ensuring compliance with the Data Protection Act 1998 and Article 8 of the European Convention on Human Rights, as implemented under the Human Rights Act 1998.

The Parties

1. Staffordshire and West Midlands Probation Trust and
2. Birmingham City Council, Corporate Strategy Team ("CST")

the above organisations are hereinafter referred to individually as a "Party" and collectively as the "Parties". "Third Party means any party other than a Party to this Agreement.

Purpose

- (1) CST is undertaking work in supporting the Troubled Families initiative. This involves undertaking work to ensure that Birmingham City Council meets its obligations imposed, inter alia, under s.17 of the Childrens Act 1989, as set out in Schedule 3, and under s.17 of the Crime and Disorder Act 1998 also set out in Schedule 3.
- (2) Staffordshire and West Midlands Probation Trust is supporting the delivery of the Troubled Families initiative to meet its obligations imposed under s.17 of the Crime and Disorder Act 1998.
- (3) The parties (as set out above) have agreed to enter into this Data Sharing Agreement to facilitate the sharing of personal data between each other for the purposes of complying with the legal obligations outlined in (1) and (2) above. Data sharing will take place under s.115 of the Crime and Disorder Act 1998, set out in Schedule 3.

IN CONSIDERATION of the respective undertakings, warranties and representations given by each of the parties as set out in this Agreement, it is hereby agreed as follows:

- 1 Definitions and interpretation

1.1 The following words and phrases shall have the following meanings unless the contrary intention is expressly stated:

'Agreement' means this agreement, its schedules and any other documents attached to, or referred to as forming part of this Agreement;

'Data' means personal data (having the meaning ascribed under the Data Protection Act 1998) that are under the control of either party and in respect of which it has agreed to share with the other party, the details of which are set out in Schedule 1 as amended from time to time by the parties.;

"Data Subject" means an individual who is the subject of personal data, the details of which, for the purposes of this Agreement, are set out in Schedule 2;

'Data Security Obligations' means technical and organisational processes and procedures that will protect the Data against unauthorised or unlawful processing and accidental loss, theft, use, disclosure, destruction and/or damage and which include:

- (a) technical security measures;
- (b) treating and safeguarding the Data as strictly private and confidential;
- (c) minimising disclosure of the Data to third parties to the fullest extent possible;
- (d) allowing access to the Data strictly on a 'need to know' basis employing appropriate access controls at all times;
- (e) copying, reproducing and/or distributing the Data only to the extent necessary for performance of the Services; and
- (f) maintaining adequate back-ups for the data to enable the Data to be recovered in the event of damage or loss;

'Privacy Laws' means all applicable privacy laws in England and Wales for the time being, including the Data Protection Act 1998 together with all subordinate legislation, directions of any competent privacy regulator, common law decisions, relevant regulatory guidance and codes of practice;

'Privacy Notice' means the Privacy Notice/Privacy Statement/ Fair Processing Notice of the relevant party.

'Processing' has the meaning ascribed by the Data Protection Act 1998;

'Sensitive Personal Data' has the meaning ascribed by the Data Protection Act 1998

1.2 In this Agreement:

- 1.2.1 references to clauses and Schedules are references to the clauses and schedules of this Agreement;
- 1.2.2 headings shall not affect its interpretation;
- 1.2.3 words importing a gender shall include all genders and references to a 'person' shall include a reference to a body corporate, association or partnership;

- 1.2.4 the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.

2 Commencement

- 2.1 This Agreement shall commence on 30th September 2013 ('Commencement Date') and shall be reviewed on an annual basis.

3 The basis for sharing

- 3.1 The Parties recognise and accept that
- 3.1.1 Staffordshire and West Midlands Probation Trust is authorised to share Data with CST and process Data received from CST by virtue of schedules 2 and 3 of the Data Protection Act 1998 (as set out in Schedule 4 of this Agreement), and s.115 of the Crime and Disorder Act 1998, as set out in Schedule 3.
- 3.1.2 CST is authorised to share Data with Staffordshire and West Midlands Probation Trust and process Data received from Staffordshire and West Midlands Probation Trust by virtue of schedules 2 and 3 of the Data Protection Act 1998, s.17 of the Children's Act 1989 and s.115 of the Crime and Disorder Act 1998.

4 Data ownership

- 4.1 The Parties acknowledge and accept that upon receipt of the Data from Staffordshire and West Midlands Probation Trust, CST is deemed to be a Data Controller in its own right in respect of the Data.
- 4.2 The Parties acknowledge and accept that upon receipt of the Data from CST, Staffordshire and West Midlands Probation Trust is deemed to be a Data Controller in its own right in respect of the Data.

5 CST's obligations

- 5.1 CST accepts that, as a Data Controller, it is legally liable for any unauthorised loss or disclosure of personal data that occurs once the information has been transferred by Staffordshire and West Midlands Probation Trust to it, and agrees that it shall and shall procure that any employees, agents and/or subcontractors/data processors that may process the Data on behalf of CST, shall process the Data provided under the terms of

this Agreement solely for the purposes specified in this Agreement, and for no other purpose, save where permitted by law including the Data Protection Act; and shall

5.1.1 comply with all applicable laws including the Privacy Laws;

5.1.2 comply with the following data requirements in respect of the Data:

- (a) process the Data strictly in accordance with this Agreement;
- (b) take reasonable steps to ensure the reliability of those of its employees, agents and subcontractors/ data processors who may have access to the Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of personal data and comply with the Privacy Laws;
- (c) take all reasonable steps to investigate any alleged breaches of Birmingham City Council's data security policy in respect of the information shared in accordance with this Agreement;
- (d) have, maintain and comply with the Data Security Obligations;
- (e) not cause or permit the Data to be transferred outside the European Economic Area without ensuring compliance with the model clauses.

5.2 To the extent permitted to do so by applicable law, CST shall notify Staffordshire and West Midlands Probation Trust of any communications it receives from third parties relating to the Data which suggest non-compliance by CST, or Birmingham City Council or any other person with the Privacy Laws, including communications from data subjects and regulatory bodies in relation to the information provided under this Agreement.

6 Staffordshire and West Midlands Probation Trust's obligations

6.1 Staffordshire and West Midlands Probation Trust accepts that, as a Data Controller, it is legally liable for any unauthorised loss or disclosure of personal data that occurs once the information has been transferred by CST to it, and agrees that it shall and shall procure that any employees, agents and/or subcontractors/data processors that may process the Data on behalf of Staffordshire and West Midlands Probation Trust, shall process the Data provided under the terms of this Agreement solely for the purposes specified in this Agreement, and for no other purpose, save where permitted by law including the Data Protection Act; and shall

6.1.1 comply with all applicable laws including the Privacy Laws;

6.1.2 comply with the following data requirements in respect of the Data:

- (a) process the Data strictly in accordance with this Agreement;
- (b) take reasonable steps to ensure the reliability of those of its employees, agents and subcontractors/ data processors who may have access to the Data and use all reasonable endeavours to ensure that

such persons have sufficient skills and training in the handling of personal data and comply with the Privacy Laws;

- (c) take all reasonable steps to investigate any alleged breaches of Birmingham City Council's data security policy in respect of the information shared in accordance with this Agreement;
- (d) have, maintain and comply with the Data Security Obligations;
- (e) not cause or permit the Data to be transferred outside the European Economic Area without ensuring compliance with the model clauses.

- 6.2 To the extent permitted to do so by applicable law, Staffordshire and West Midlands Probation Trust shall notify CST of any communications it receives from third parties relating to the Data which suggest non-compliance by Staffordshire and West Midlands Probation Trust or any other person with the Privacy Laws, including communications from data subjects and regulatory bodies in relation to the information provided under this Agreement.

7 Warranties

- 7.1 Each party warrants that it has full and due authority to enter into this Agreement and that entering into and undertaking the activities set out in this Agreement will not cause it to be in breach of any other contract or order of any competent court or regulatory authority.
- 7.2 CST warrants that it is legally entitled to share the personal data.
- 7.3 CST warrants and undertakes that it and its employees have not done and shall not do or, where they have a duty to act, have not omitted to do and shall not omit to do anything that would cause Birmingham City Council to be in breach of the Privacy Laws.
- 7.4 Staffordshire and West Midlands Probation Trust warrants that it is legally entitled to share the personal data.
- 7.5 Staffordshire and West Midlands Probation Trust warrants and undertakes that it and its employees have not done and shall not do or, where they have a duty to act, have not omitted to do and shall not omit to do anything that would cause Staffordshire and West Midlands Probation Trust to be in breach of the Privacy Laws.

8 USE OF THIRD PARTIES

- 8.1 Staffordshire and West Midlands Probation Trust accepts that CST is entitled, as a Data Controller, to use a Data Processor to process the Personal Data provided under this Agreement.
- 8.2 Where CST uses a Data Processor, that Data Processor shall be employed on the same terms as set out in this Agreement, and that CST is legally responsible, as the Data Controller, for the actions of the said Data Processor.
- 8.3 CST accepts that Staffordshire and West Midlands Probation Trust is entitled, as a Data Controller, to use a Data Processor to process the Personal Data provided under this Agreement.
- 8.4 Where Staffordshire and West Midlands Probation Trust uses a Data Processor, that Data Processor shall be employed on the same terms as set out in this Agreement, and that Staffordshire and West Midlands Probation Trust is legally responsible, as the Data Controller, for the actions of the said Data Processor.

9. REVIEW / VARIATION

The provisions of this Agreement shall be reviewed on the first of:

- a) the annual anniversary of this Agreement or the last review; and/or
- b) changes to legislation or Court decisions which have a material impact on the provisions of this Agreement;

The parties can vary the terms of this Agreement by prior written agreement.

10. TERMINATION

This Agreement shall be binding on the Parties until either of the following occur;

- a) the prior written agreement of the parties to end this Agreement;
- b) one month following a failure of the parties to successfully undertake and conclude a review of this Agreement in accordance with the provisions of clause 9 above.

In the event of a decision to terminate this Agreement, a programme setting out the procedures and timescales required for the destruction of any personal data shared under its provisions shall be agreed by the parties.

Signatories

This Agreement is signed:

On behalf of Staffordshire and West Midlands Probation Trust by

Name:

SARAH CHAND

(Authorised signatory)

Signature

S. E. Chand

Date

4/10/13

On behalf of Birmingham City Council, Corporate Strategy Team by

Name:

Tony Bunker
Troubled Families Identification, Tracking and
Evaluation Manager
Corporate Strategy Team
Birmingham City Council

Signature

T. Bunker

Date

4/10/13

SCHEDULE 1

The Data

Data to be Provided by Staffordshire and West Midlands Probation Trust:

For offenders living in Troubled Families or potential Troubled Families and who are judged to be at medium or high risk of reoffending: name, address, date of birth, level of risk of reoffending

Data To Be Provided By CST:

Name, date of birth and address of all known individuals within each identified Troubled Family and potential Troubled Family, details of which identification criteria the family/individuals meet.

SCHEDULE 2

Data subjects

For Staffordshire and West Midlands Probation Trust held Data:

Any offenders living within identified Troubled Families or potential Troubled Families and who are judged to be at medium or high risk of reoffending.

For CST held Data:

All households meeting at least two of the three national criteria listed in the DCLG document "The Troubled Families Programme – Financial framework for the Troubled Families programme's payment-by-results scheme for local authorities".

SCHEDULE 3
STATUTORY PROVISIONS

Childrens Act 1989

S.17

Provision of services for children in need, their families and others.

(1)It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—

(a)to safeguard and promote the welfare of children within their area who are in need; and

(b)so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.

(2)For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.

(3)Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.

Part 1 of schedule 2 of the Children's Act 1989

Identification of children in need and provision of information

1(1) Every local authority shall take reasonable steps to identify the extent to which there are children in need within their area.

Prevention of neglect and abuse

4(1) Every local authority shall take reasonable steps, through the provision of services under Part III of this Act, to prevent children within their area suffering ill-treatment or neglect.

(2) Where a local authority believe that a child who is at any time within their area—

(a) is likely to suffer harm; but

(b) lives or proposes to live in the area of another local authority
they shall inform that other local authority.

(3) When informing that other local authority they shall specify—

(a) the harm that they believe he is likely to suffer; and

(b) (if they can) where the child lives or proposes to live.

Provision to reduce need for care proceedings etc.

7 Every local authority shall take reasonable steps designed—

(a) to reduce the need to bring—

(i) proceedings for care or supervision orders with respect to children within their area;

(ii) criminal proceedings against such children;

(iii) any family or other proceedings with respect to such children which might lead to them being placed in the authority's care; or

(iv) proceedings under the inherent jurisdiction of the High Court with respect to children;

(b) to encourage children within their area not to commit criminal offences; and

(c) to avoid the need for children within their area to be placed in secure accommodation.

Crime and Disorder Act 1998

S.17

Duty to consider crime and disorder implications.

(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

(2) This section applies to a local authority, a joint authority, [the London Fire and Emergency Planning Authority,] a police authority, a National Park authority and the Broads Authority.

(3) In this section—

- "local authority" means a local authority within the meaning given by section 270(1) of the Local Government Act 1972 or the Common Council of the City of London;
- "joint authority" has the same meaning as in the Local Government Act 1985;
- "National Park authority" means an authority established under section 63 of the Environment Act 1995.

115 Disclosure of information.

(1) Any person who, apart from this subsection, would not have power to disclose information—

(a) to a relevant authority; or

(b) to a person acting on behalf of such an authority,

shall have power to do so in any case where the disclosure is necessary or expedient for the purposes of any provision of this Act.

(2) In subsection (1) above "relevant authority" means—

(a) the chief officer of police for a police area in England and Wales;

(b) the chief constable of a police force maintained under the Police (Scotland) Act 1967;

(c) a police authority within the meaning given by section 101(1) of the Police Act 1996;

(d) a local authority, that is to say—

(i) in relation to England, a county council, a district council, a London borough council, a parish council or the Common Council of the City of London;

(ii) in relation to Wales, a county council, a county borough council or a community council ;

(iii) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

(e) a local probation board in England and Wales;

(ea) a Strategic Health Authority;

(f) a health authority.

Schedule 4

Data Protection Provisions

Data Protection Act 1998 (schedule 2), in respect of ordinary personal data

5The processing is necessary—

- (a)for the administration of justice,
- (b)for the exercise of any functions conferred on any person by or under any enactment,
- (c)for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
- (d)for the exercise of any other functions of a public nature exercised in the public interest by any person.

Data Protection Act 1998 (Schedule 3), in respect of sensitive personal data.

7(1)The processing is necessary—

- (a)for the administration of justice,
- (b)for the exercise of any functions conferred on any person by or under an enactment, or
- (c)for the exercise of any functions of the Crown, a Minister of the Crown or a government department.