

## 4. Privacy Notices and Consent

### 1. Purpose

This document explains how to adhere to the first principle of the General Data Protection Regulation - lawfulness, fairness and transparency;

### 2. Definition

The first data protection principle requires organisations to process personal data lawfully, fairly and in a transparent manner in relation to the data subject.

It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed.

The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used.

That principle concerns, in particular, information to the data subjects about the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the natural persons concerned and their right to obtain confirmation and communication of personal data concerning them which are being processed.

Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise their rights in relation to such processing.

Ensuring fairness in everything you do with people's personal details is central to complying with duties under GDPR. This means organisations must:

- have legitimate reasons for collecting and using the personal data
- not use the data in ways that have unjustified adverse effects on the individual concerned
- be open and honest about how it is intended to use the data, provide clear statements or notices that explain what information will be shared, who with and/or seek consent to share where appropriate
- handle people's personal data only in ways they would reasonably expect
- make sure nothing unlawful is done with the data

Organisations need to be clear and open with individuals about how their information will be used. Transparency is always important, but especially so in situations where individuals have a choice about whether they enter into a relationship with a service provider or not.

The inclusion of a privacy notice and provision of prescribed information about how their data will be handled are key to compliance with this principle.

### 3. Privacy notices

Privacy notices also known as fair processing statements are one in the same thing and should be clear and concise and the way they are written should be accessible to all groups of people.

They can be handed to individuals, published on websites, displayed in reception areas and other public places or held in case files.

## 4. Privacy Notices and Consent

Notices should:

Clearly Identify the organisation who is collecting personal information and provide contact details of the data protection officer (if applicable).

State the purpose(s) for collecting the information and each legal basis for processing.

State the recipient(s) or categories of recipients of the personal data.

If the individual providing the information asks for further details on how their information will be used this must be provided.

State how long the information will be retained

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### Retention

Personal information should not be retained longer than necessary. Retention beyond any statutory retention period must only take place where there is genuine need and a lawful justification for doing so. These should be detailed in an organisations' retention schedule.

It is best practice to inform people how long their personal information will be held, especially in the case of special category information. Where it will be held for a fixed period of time, this should be stated, e.g. 'one year from the date of your application' and how it will be disposed of. If the purpose clearly indicates the period of retention, it is not necessary to specifically state this elsewhere.

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### Sharing

Explain with whom the information will or may be shared

You should make it clear who the information will or may be shared with and why. It is not necessary to do this where it is reasonable to assume that the individual will be aware e.g. it is obvious that information provided in a free school meals application will be passed to the school.

It might not be obvious how a photograph will be shared so explicit consent may be required, particularly when using images of young people.

### 4. Seeking Consent

Consent is needed when there is no other legal basis for sharing information. In most cases, a robust fair processing statement will suffice or implied consent will be appropriate.

Implied consent may be acceptable if it is clear from an action somebody takes, such as signing up for a particular service, that they agree to the collection / disclosure of personal information to enable the delivery of that service

Where consent is expressly sought in the absence of other lawful basis, then this should be recorded. Partner organisations may choose to obtain written consent even when it is not absolutely necessary. Where consent is required, or considered to be desirable, partner organisations should obtain it from the individual at the earliest opportunity.

An example of a consent form is provided in Annex A.

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### Valid Consent

For consent to be valid it must be freely given, fully informed, specific, unambiguous and a positive indication of agreement by the data subject. Consent must never be assumed as a standard, but shall be obtained only by opting 'in' to whatever is agreed.

### Capacity to give consent

In order for an individual to possess the capacity to give consent, they must be capable of retaining, understanding and assessing information material to make that decision.

Young people under the age of 16 are capable of giving consent, provided that they are judged to be of sufficient age and maturity to have a general understanding of the nature of what they are being asked to consent to - each case must be assessed individually.

The consent of a parent should be sought if the young person is judged to be incapable of giving consent.

It is good practice to involve a parent(s) in the consent process wherever possible, unless this is against the wishes of the young person.

If an individual lacks the mental capacity to give consent another person who has been granted a lasting power of attorney or has been appointed to act on their behalf by an order of the Court of Protection can give consent on their behalf.

Where no such authority exists, and depending on the circumstances, it may be necessary to seek consent from an "appropriate person". This could be next of kin or a carer.

Where a person is incapable of doing so, this should be noted and if possible witnessed. A note should also be made where a privacy notice is conveyed verbally

### Duration of consent

In general, once a person has given consent, that consent may remain valid for the duration for the purposes as defined in the privacy notice. If the purpose of the specific partnership significantly changes it may be necessary to seek fresh consent.

### Refusal of Consent

Where an individual has refused consent and no other lawful reason for processing exists, their personal information must not be shared. Details of the refusal will be recorded by the relevant organisation.

In such circumstances, the individual should be made aware that the level of the service they receive may be adversely affected as a result of their decision, but no undue pressure should be applied to obtain consent.

## 5. Restrictions

Information collected should only be processed in line with the privacy notice and any relevant consent provided.

New consent or legal basis will be required to share or process information in a different way to that previously understood by the data subject.

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Partner organisations should, as a matter of good practice, seek fresh consent if there are significant changes in the circumstances of the individual or the work being undertaken with them.

A person is entitled at any time to subsequently withdraw that consent or to place restrictions upon the personal information that may be shared. Their wishes must be respected unless there are sound legal reasons for not doing so.

In the event of a person making a request to withdraw or place restrictions on consent previously given, the agency receiving such a request will at the earliest opportunity inform all other partner organisations that may be affected. Details will be recorded by the receiving organisations.

### **6. Indicate who can be contacted for further information.**

It needs to be clear to people how they can access the statutory rights in relation to the information held about them, as this may help them spot inaccuracies or omissions in their record.