Consent Policy

Thorn Grove Primary School

Approved by Governing Body on:	21 November 2024
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Next review due by:	November 2026
Based on a Stockport LA Policy	Reviewed September 2024

Contents

1.   Overview of consent

Definition

"Any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by statement or by clear affirmative action, signifies agreement to the processing of personal data relating to him or her"

Key themes

- Consent is offering people genuine choice and control

It must;

- Be demonstrable

- Be presented in a way which is clearly distinguishable from other information

- Be easily accessible and understandable

- Be written or explained in clear and plain language

- Clearly explain to the data subject who the data controller will be

- Name any third parties who will rely on the consent

- Clearly explain the purpose for processing the personal data

- Be freely given by the data subject

- Be as easy to withdraw consent as it was to give

- Not rely on inactivity, silence or pre-ticked boxes.

- Consent cannot be relied upon where there is a clear imbalance between the data subject and data controller

- Evidence of consent, who, when, how and what individuals were told must be kept

2.   When should consent be obtained?

Understanding when to obtain consent can be complicated. Many people mistakenly believe schools must always obtain consent prior to processing personal data.

This is not true, consent is only one of the UK General Data Protection Regulation's (UK GDPR) six conditions for processing, and it is recommended that consent is used where none of the other conditions apply.   A lack of consent would not constitute a breach providing another condition can be met. As a reminder below is a list of alternative GDPR conditions under Article 6;

- Necessary for contract

- Necessary for a legal obligation

- Vital interests

- Necessary for official authority / task carried out in the public interest

- Necessary for legitimate interest

Consent is not the easy option under GDPR, you may wish to rely on another legal condition if possible.

If the processing of personal data is "needed" consent should not be relied upon, as it would not be considered to be freely given. Where the subject has no genuine choice, consent would not be considered valid.

If consent is requested and then declined, another condition cannot then be used. Please ensure there is not a more suitable option from the above list before pursuing the consent route.

It must be clarified that informing individuals how their personal data will be handled via a privacy notice does not constitute asking for their permission.

Schools can rely on consent where there is no imbalance of power and the parent, pupil or staff member has a genuine choice to consent to the processing of their personal data. In order to build trust and engagement, consent would be considered appropriate here.

It may be worth looking back retrospectively at where consent has been sought and ensuring this was gathered in line with the more recent UK GDPR provisions.

3.   Best practice when obtaining consent

Unambiguous – we must ensure that parents, pupils and staff members can easily understand what they are signing up for. When collecting the information there should be no doubt about the intentions. Schools must aim to use simplistic language and avoid using double negatives. For example, "I would like to receive emails from…", or "please sign me up for email communications".

Statement or clear affirmative action – it is possible for parents, pupils and staff to show their consent with an action, as well as make a statement when giving their consent. There must be an active opt in as opposed to a pre-ticked box or consent by default and the options given to the service users must be given equal importance.

Freely given – there must not be an imbalance between the data subject and data controller, for example in an employee/employer situation. Parents, pupils and employees must have a genuine free choice to consent. They must not be misled, intimidated or negatively impacted by withholding their consent. For example, "if you do not give your consent to the use of images your child cannot take part in the School production" – this would not be compliant consent.

Specific – you must ensure that the information given, when requesting consent, covers all processing activities. It can be hard where there are multiple processing activities taking place. One "catch all" style consent document will not be specific enough.

Informed – a lack of clarity is a lack of valid consent. Parents, pupils and staff must be informed of the identity of the data controller and how/why their data will be processed. They should also be informed immediately how to withdraw consent. It should be as easy to withdraw as it were to give consent ideally via the same method. For example if consent were given online to receive marketing information, a sentence underneath advising "if you wish to stop receiving communications please follow this link". To ensure parents, pupils and staff are thoroughly informed, any information relating to consent must not be hidden within pages of terms and conditions, they must be separated and presented in a way which is clearly distinguishable.

Granular – when requesting parents, pupils and staff consent to a number of different processing activities, you will need to ensure you offer them the option to consent to each activity individually. Service users may wish to consent to some areas and not to others.

Examples of lawful consent

The following list gives practical examples of how service areas may seek to gain valid consent from parents, pupils and staff;

- Signing a consent statement in paper form
- Clicking an opt in button or link online
- Selecting from equally prominent yes/no options
- Responding to an email requesting consent
- Answering yes to a clear oral consent request
- Volunteering information for a specific purpose

However, there are some activities laid out by the ICO which should be avoided when gathering consent such as;

- Avoid using opt out boxes
- If you are seeking consent for a number of processing activities, avoid using a catch all consent option – each type of processing should have its own individual opt in box
- If a service user does not use the internet avoid only having online forms - they must have an alternative option to consent/withdraw
- Do not force parents, pupils and staff to create online accounts and log in, in order to give their consent / withdraw consent

The ICO will consider that the quality of consent is not sufficient if it has in any way been retrieved due to inaction, via a pre-ticked box, opt out box or any other method which is deemed to have taken advantage.

4.   How to record consent

When ensuring consent is valid under GDPR the evidence needs to be recorded to demonstrate it was appropriately obtained. This includes making a note of the following criteria;

- Details of the parent, pupil or staff member who has consented
- When they consented
- How they consented
- The school details
- Any third parties who will rely on the consent
- Exact details of the information you provided to the individual at the time
- How to withdraw consent
- If it was passed on, when, how and to whom
- The records must be specific enough to demonstrate exactly what information the consent related to, to avoid any confusion and ensure accurate audit trails.

5.   Managing consent

Once we are satisfied we have recorded the correct information, we then need to continue to monitor the information in the following way;

- Regularly review to check the processing and purpose have not changed - it may be possible that over time the purpose of your activity evolves and the original purpose for which consent was sought is no longer accurate. In that case you would be acting outside of the data subject's consent and this would constitute a breach of the GDPR.
- Set reminders to refresh consent at appropriate intervals
- Act on withdrawals of consent as soon as possible. If for example the consent relates to marketing communications, we must ensure the personal data is removed from both the mailing list and removed from the list of recorded consent to prevent any future issues occurring.
- Build regular consent reviews into business processes

6.   Obtaining consent for the use of images

Consent must be sought if you are using images of people, as images still constitute personal data. However, a person must be clearly recognisable within the image –consent may not be needed where an individual is out of focus or has their back to the camera. This would need considering on a case by case basis.

Names should not accompany images for promotional literature. There are certain circumstances where names or other identifiable information can accompany images for example where there has been a competition winner.

Consent is not needed if images are being stored for security or safeguarding reasons, for example to control building access or to provide identification in the event of an absconsion, but if the school wished to use those images for any additional purposes they would need explicit consent. People must be made aware of this through privacy notices and consent forms.

Where images of children are being used, particular attention must be paid to the safety and consent of those children and parents. Schools must allow additional time when gathering consent for the use of children's images, as this process must be thoroughly explained and understood.

As with other forms of consent, good practice would be to keep images and consent forms together to demonstrate this has been obtained. It must be clear on the consent forms exactly what the images are being used for, and agree not to use them for any further activities. Extreme care must be taken to regain consent prior to using images for alternative projects.

7. Consent from children

Consent for children is expected to be clear and age appropriate. If services are offered directly to children, all information relating to consent or privacy notices must be written in a clear, plain way to ensure understanding.

If you offer online services (information society services) to children, there are specific rules which must be followed. Children under 13 cannot consent themselves, and so a person holding parental responsibility must consent on the child's behalf. You therefore must consider having functions on internal systems to log and verify parental consent on behalf of a minor.

A child can consent to the use of online services after the age of 13 but as a general rule a child must have sufficient understanding and maturity to exercise their consent. A common sense approach will be adopted in the event a child or young person consents to the processing of their own data via the consent method.

Children can be less aware of risks to their safety and consequences of sharing their personal data and so service areas must take extreme precautions when processing this type of data.

8. Lacking capacity to consent

Consent will be valid unless you have been made aware, or have reason to believe, that the individual who consented lacks the capacity to do so. This must be judged on the capacity of the individual and on an individual basis.

9. Importance of gaining consent

Gaining the appropriate levels of consent can in turn improve the parents', pupils' and staff members' trust and engagement and will enhance the school's reputation. In turn inappropriately using personal data or relying on invalid consent can seriously harm our reputation, trust from parents, pupils and staff and result in fines or enforcement action from the ICO.

10. Flowchart to follow in order to obtain consent lawfully

(this may be used as an easy guide for staff to reference when determining whether to use consent as a lawful condition, and how to obtain and manage that process)

1. Is consent the most appropriate of the 6 legal conditions?

- Necessary for contract
- Necessary for a legal obligation
- Vital interests
- Necessary for official authority / task carried out in the public interest
- Necessary for legitimate interest

If the answer is yes move on to no.2

2. Are you able to obtain consent in compliance with the GDPR?

- Offering individuals genuine choice and control
- It must be demonstrable
- Presented in a way which is clearly distinguishable from other information
- Easily accessible and understandable
- Written or explained in clear and plain language
- Clearly explain to the data subject who the data controller will be
- Name any third parties who will rely on the consent
- Clearly explain the purpose for processing the personal data
- Freely given by the data subject
- Must be as easy to withdraw consent as it was to give
- Must not rely on inactivity, silence or pre-ticked boxes
- Consent cannot be relied upon where there is a clear imbalance between the data subject and data controller
- Keep evidence of consent, who, when, how and what individuals were told

If the answer is yes move on to no.3

3. Can consent be accurately recorded?

- Who consented?
- How did they consent?
- Via which method?
- When did they consent?
- A record of the information presented to them at the time
- Any third parties involved?
- How to withdraw

If the answer is yes move on to no.4

4. Can you remain compliant with data subject rights?

- Right to withdraw consent
- Right to have data removed after the agreed period of time
- Right to be forgotten
- Right to data portability
- Ability to restrict data processing
- Right to rectification