

GUIDANCE: Clerks and GDPR

Clerks and Data



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Clerks and GDPR

Clerks will need to have an understanding of GDPR for two main reasons. Firstly, they will need to advise governing boards on their responsibilities in relation to GDPR and secondly as they will themselves be handling data they will need to understand how they can comply with GDPR.

With regards to advising governing boards about their responsibilities under GDPR, NGA has produced guidance that sets out the board's role and includes questions that governors should be asking their Senior Leaders.

This factsheet is designed to help inform clerks about how GDPR affects their day to day role.

When will a clerk encounter personal data?

It is important to remember that the Trust or School will be the data controller. Therefore, when governors sign up, they will need to be informed about the legal obligations on the school setting to share their personal details with the likes of DBS, DfE, and Companies House and/or Charity Commission (in some instances) and potentially the local authority and/or published on the school site for parents to see.

In addition to sharing information because of legal obligations, there will be other instances where governor information will need to be shared in order for the clerk to do their job, for example, the clerk will require some information, such as contact details of governors.

In addition to clerking meetings of governors, clerks may also be required to clerk panel meetings. When this occurs, clerks may have in their possession, personal information about other individuals such as pupils, parents and staff. This is sometimes unavoidable because of the papers that will need to be sent to governors in advance.

When can personal data be processed?

Personal data can only be processed if at least one of the lawful bases for processing is met. The lawful bases are set out in Article 6 of the GDPR and can be found on the [ICO website](#):

- (a) **Consent:** the individual has given clear consent for you to process their personal data for a specific purpose.*
- (b) **Contract:** the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.*
- (c) **Legal obligation:** the processing is necessary for you to comply with the law (not including contractual obligations).*



(d) Vital interests: *the processing is necessary to protect someone's life.*

(e) Public task: *the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.*

(f) Legitimate interests: *the processing is necessary for your legitimate interests or the legitimate interests of a third party unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)*

In a school setting, the most likely justifications for processing personal data would be (a) consent, (c) legal obligation or (e) public task.

More than one lawful basis can apply and schools should seek to rely on as many bases as are appropriate in any given situation.

Below is more detail on the lawful bases most relevant to schools:

1) Consent

This is where the school has obtained positive consent from the individual to whom the data relates to. However, it is important to remember that the consent can be withdrawn at any time and if it is withdrawn, the school will need to cease processing that personal data straightaway.

For example, if the school was relying on consent for using photographs of staff or pupils for the school website if the individuals later withdrew their consent, the images would need to be removed from the website immediately.

2) Legal obligation

This relates to the school needing to process personal data because of a legal obligation they may have. The legal obligation would derive from statute and regulation and is unlikely to include statutory guidance.

An example of this would include disclosing information to the local authority because of a safeguarding issue.

3) Public task

This is a wider lawful basis and would include the processing of data in accordance with statutory guidance.

For example, the publishing of the register of interests on the school website would likely fall under this lawful basis.



How are the clerk's services obtained?

Your working arrangement with the governing board will affect the actions that the clerk and the school need to take in relation to GDPR.

If the clerk is employed by the school or trust they would be processing the data on behalf of the institution which is the data controller. Therefore, if a breach were to occur, it is the school/Trust that would be liable although the clerk may be subject to internal disciplinary procedures.

However, if the clerk is contracted from outside the school setting, then any contract between the school/trust and the clerk must cover the fact that they are GDPR compliant, and the school setting would need to carry out due diligence to satisfy themselves that they are. The school setting should review its contracts with all external providers, including clerks to ensure they cover the requirements of GDPR. If you are an independent clerk it is worth proactively raising this with your chair.

In general, liability for any data breaches will fall on the Data Controller (school or trust), but data processors may face action and indeed fines if the school or trust could show that it had taken all reasonable steps to ensure compliance. As a clerk make sure you are following best practice in relation to any data you process.

Where the clerk has been contracted in separately and therefore is not an employee, the ICO has released guidance on [Contracts and liabilities between controllers and processors](#). Page 10 states:

Contracts between controllers and processors:

- ensure that they both understand their obligations, responsibilities and liabilities;
- help them to comply with the GDPR;
- help controllers to demonstrate their compliance with the GDPR; and
- may increase data subjects' confidence in the handling of their personal data.

Therefore, if you are not employed by the school/Trust you are likely to be asked to agree to such an agreement.

Should clerks only use school issued email addresses?

Clerks that clerk for numerous schools have contacted us asking whether it was a requirement that they have a school issued email address for each of the schools they clerk for. They were concerned that this would become unmanageable as the number of schools they clerked increased. Each email account would need to be monitored and so having too many accounts may result in responses being delayed.

In these cases, it is important that the school/Trust and clerk can demonstrate that they have taken appropriate technical measures therefore as clerk, you will need to assure the school/Trust that the email address you are using has the same level of technical safeguards as the one provided by the school/Trust. Personal email addresses are unlikely to have the same security measures as those provided by the school. An alternative could be for all communications about the governing board to be take place on a back office



portal that is accessed through the school website. This could also be used for governor to governor communications.

Can the clerk be appointed as the Data Protection Officer (DPO)?

We have received questions from governors and clerks about who can be appointed as the DPO.

The General Data Protection Regulation (GDPR) does not detail who can and cannot be a Data Protection Officer (DPO) and the role of clerk is not explicitly prohibited from the role of DPO.

NGA's view is based on what the legislation says about the role and the ICO's guidance. We are concerned that in some cases it is being seen as something which can be tacked onto the clerk's role without proper consideration for what this distinct role entails. The role is a new role that has been created by the General Data Protection Regulation and involves providing advice and monitoring the organisation's compliance. This would require an in depth understanding of relevant laws, conducting internal audits and training staff. This is therefore not a role that should be undertaken lightly as any candidate for the role of DPO should ensure that they have the necessary skills to carry out the role effectively.

There are also conflicts of interest issues to consider as the regulation states that the DPO must directly report to the highest management level which, in schools would be the governing board and so conflicts that arise by one individual holding both roles would need to be managed and solutions put in place.

If the clerk does decide to undertake the role, we would advise that each role has a separate contract to reiterate that they are two separate roles. If there is only one contract, it can create difficulties as the two roles could become blurred. By having two separate contracts, the roles and responsibilities can be kept separate and each can be managed independently.

Therefore, although the same individual is not legally prohibited from undertaking the role of clerk and DPO, it is important that the role is seen as one that is distinct to the role of clerk. Finally, given the importance of the role, anyone appointed as DPO must ensure that they fulfil the role requirements. More information on what the role entails can be found on the [Information Commissioner's Office website](#).