

Part 1 Data Protection Policy

The Preschool takes the protection of data extremely seriously and shall comply in all respects with the provisions of the EU General Data Protection Regulation 2016/679 ("GDPR") or any subsequent enactment of legislation in relation to data protection. The general principles which shall apply to all of the personal data held by the Preschool in accordance with Article 6 of the GDPR are that: -

- It shall be processed fairly and lawfully;
- It shall be collected for specified, explicit and legitimate purposes;
- It shall be adequate relevant and not excessive in relation to the purposes for which we hold it;
- It shall be accurate and kept up to date and erased or rectified as appropriate;
- And it shall be kept for no longer than necessary for the processes for which it is collected.

The Preschool is continuously aware of the risks to individuals when data is breached which can include the following: -

- Physical, material and non-material damage;
- The individual's loss of control over his or her personal data;
- Limitation of the individual's rights;
- Discrimination;
- Identity Theft;
- Fraud;
- Financial Loss;
- Unauthorised reversal of pseudonymised data;
- Damage to reputation;
- Loss of confidentiality of personal data protected by professional secrecy (for example medical records).

The Grounds for Processing Data

The Preschool shall only process personal data on one of the following grounds in accordance with Article 6 of the GDPR as follows: -

- With consent;
- For the performance of a contract;
- For compliance with a legal obligation; or
- When in the legitimate interests of the Preschool.

It is not expected the Preschool will have reason to rely on either the grounds of it being in the vital interests of the data subject, or in the public interest.

Given the business of the Preschool is to provide early childhood education, it is anticipated that in the most part the Preschool shall be processing data for the performance of a contract with a parent, for the reason of providing early childhood education to the enrolled child, to contracts of employment with staff members. It is also anticipated that data will be processed in accordance with legal obligations to which the Preschool is subject, and in the legitimate interests of the Preschool. Such examples are when the Preschool is required to identify parents, children and staff in accordance with Safeguarding regulations from time to time in force, and to keep data and files for fixed periods of time in order to comply with Local Government regulations.

On the rare occasion when data is not initially obtained for the performance of a contract then specific informed consent to process the data will be obtained from the data subject making clear the purposes of the processing. The Preschool acknowledges that consent cannot be valid where there is a clear imbalance between the Preschool and the data subject, and that this imbalance is likely to apply to employees of the Preschool. The Preschool further acknowledges that where it is necessary to prove consent has been obtained to process data the burden of proof lies with the Preschool. In circumstances where consent is relied on the Preschool will refresh consent every two years in accordance with the ICO Consent Guidance.

Purpose Limitation

The Preschool shall only collect personal data for specified, explicit and legitimate purposes in accordance with Article 5(1)(b) of the GDPR and it shall not be further processed in a manner incompatible with those purposes. If the Preschool wishes to process personal data for a further purpose that further processing shall be compatible with the first. It is expected in the main that any further purpose for processing personal data shall be compatible with the original purpose and the Preschool shall consider the following factors when deciding this: -

- Any link between the original purpose and the purposes of the intended further processing;

- The context in which the personal data has been collected, and in particular the reasonable expectations of data subjects based on their relationship with the Preschool as to their further use.

- The nature of the personal data;

- The consequences of the intended further processing for the data subject; and

- The existence of appropriate safeguards.

The circumstances the Preschool considers likely to amount to further processing shall be marketing (instigated by the Preschool), and providing information to parties such as the Local Government Safeguarding officials – where the Preschool shall often be under a legal duty to provide required information.

Data Minimisation

The personal data collected by the Preschool shall be adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed in accordance with Article 5(1)(c) of the GDPR. The Preschool shall ensure that it reviews its procedures annually to ensure excessive data is not being collected, which shall include for example checking the content of information to be obtained on expression of interest, and enrolment forms. Any erasure or rectification of inaccurate personal data shall be made without delay.

Accuracy

The Preschool shall ensure that personal data is kept accurate and up to date.

Storage Limitation

The Preschool shall not keep personal data in a form which permits the identification of data subjects for longer than is necessary.

Integrity and Confidentiality

In accordance with Article 5(1)(f) of the GDPR the Preschool shall ensure that all personal data is processed in a manner that ensures appropriate security of it, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage.

Accountability

The Preschool shall demonstrate compliance with the GDPR and data protection generally through the following measures: -

- The existence of this data protection policy which shall be reviewed annually;
- Maintaining records of processing activities;
- Data protection training for staff;
- Data protection audits; and
- The incorporation of the principles of this policy in the Preschool's data protection procedures are set out below in part 2.

Accountability - Data Protection Impact Assessments

The Preschool has considered the requirement for Data Protection Impact Assessments (DPIA) in accordance with Article 35(1) of the GDPR in order to identify and evaluate the likely data protection risks arising from a new activity that involves processing personal data, and in particular in relation to the processing of special categories of personal data. Whilst the Preschool will process sensitive data such as medical records and criminal records, it considers that the activities set out in Article 35 (3) and Recital 91 are not applicable due to the small scale on which the preschool operates, and therefore no DPIA is required at the present time. If the Preschool deploys new technology in the future which is likely to result in high risk to individuals then it will carry out a DPIA as required by the GDPR.

Processing Special Categories of Personal Data

The Preschool notes that there is a general prohibition on processing special categories of data in Article 9(1) of the GDPR which comprises of personal data which reveals the following types of information about individuals: -

- Racial or ethnic origin;
- Political opinions;
- Religious or philosophical beliefs;
- Trade union membership;
- Genetic data;
- Biometric data for the purpose of uniquely identifying a natural person;
- Data concerning health; and
- Data concerning sex life or sexual orientation

The Preschool does process several types of the above data for both children, parents and employees. Article 9(2) provides a list of circumstances in which the general prohibition may be lifted and the grounds covered on which the Preschool intends to rely are as follows: -

- Employment – where the processing is necessary for carrying out the Preschool's obligations and exercising specific rights in the field of employment, social security and social protection law – for example collecting the data of current or prospective employees for the purpose of ensuring and demonstrating equality and diversity in accordance with the Equality Act 2010.
- Legal Claims – the processing is necessary for establishing, exercising, or defending legal claims
- Explicit consent – as a last resort if not covered under one of the grounds above.

Data Subjects' Rights

The Preschool acknowledges that the rights of data subjects as set out in Chapter III of the GDPR are as follows: -

- The right to transparency;
- The right to information and access to personal data;
- The right to rectification;
- The right to erasure;
- The right to restriction of processing;
- The right to data portability;
- The right to object to processing; and
- Rights in relation to automated decision taking

In relation to the **right to transparency** the Preschool's procedure is as set out below, although it is noted that transparency information need not be provided where the data

subject is already aware of the processing activity or the recording or disclosure of personal data is expressly permitted by law (in accordance with Recital 62 of the GDPR).

In relation to the **right to information and access to personal data** the Preschool acknowledges the right of the data subject in accordance with Article 15 of the GDPR to be provided with the following information: -

- The purpose of the processing;
- The categories of personal data concerned;
- The recipients of personal data or categories of recipient;
- That there will be no recipients of the data in third countries (outside the EEA);
- The period of period for which data will be stored or the criteria used to determine the retention period;
- The existence of the data subject's right to rectification, erasure, and restriction of processing and the right to object to processing;
- Their right to complain to the supervisory authority, the ICO;
- Where data are not collected from the them, information as to their source; and
- The existence of any automated decision taking (none).

The data subject is entitled to make a request for details of their personal data held by the Preschool and this shall be referred to as a "*subject access request*". The Preschool has considered whether to offer remote access to a secure system to provide data subjects with direct access to their personal data and has considered its current systems are not sufficient to allow this without a significant investment in time and money, so direct access to data will not yet be offered.

Article 17 of the GDPR introduces a new **right to erasure**. The Preschool notes this right, and will forget data subjects when their data is no longer necessary for the purposes for which it was collected. The Preschool will also erase data in the following circumstances: -

- If the data subject withdraws consent and there is no longer a legal basis for processing;
- If the data subject objects to the processing pursuant to the right expressed in Article 21;
- If the personal data has been unlawfully processed;
- If the Preschool is under a legal obligation to erase the data.

Where the Preschool removes data, it will notify any other data controllers it has provided information to to remove the data as well.

Article 17(3) provides exceptions to the right to erasure where the processing is necessary as follows (the list below does not contain all of the exceptions in the GDPR, only those relevant to the Preschool): -

- For compliance with a legal obligation to which the Preschool is subject or for the performance of a task in the public interest;

For the establishment, exercise or defence of legal claims.

The **right to restriction of processing** as per Article 18 of the GDPR may apply to the Preschool in the following circumstances: -

Where the data subject contests the accuracy of the data processing can be restricted for a period to enable the Preschool to verify whether the data is accurate;
If the processing was unlawful and the data subject opposes erasure of the data, they may instead require restriction of processing;
If the Preschool no longer needs the data but the data subject requires the data for establishing, exercising, or defending legal claims; or
Where the data subject has exercised the right to object to processing pursuant to Article 21(1) referred to below, processing may be restricted for the period necessary to ascertain whether the Preschool's legitimate grounds override those of the data subject.

Where a data subject exercises the right (other than for storage), the data may only be processed on the following terms: -

With the data subject's consent;
For establishing, exercising, or defending legal claims;
For the protection of another natural or legal person's rights; or
For reasons of important public interest of the UK.

The **right to data portability** is expected to apply to the Preschool when a parent decides to move to an alternative preschool and asks the Preschool to transfer their file (data) to another preschool. The Preschool shall comply with this request with regard to personal data, although complete files may still be subject to a lien in respect of costs. It is noted that the right applies only to automated means and it is unlikely the Preschool will have the technical ability to port its electronic data due to the specification of the record management system used, however the Preschool will hand over physical files.

The **right to object to processing** is set out in Article 21 of the GDPR. The Preschool acknowledges data subjects' right to object on the following relevant grounds: -

Where the processing is based on the Preschool's legitimate interests or performance of a task carried out in the public interest;
Where the processing is for the purpose of direct marketing.

Upon receiving an objection where the processing is based on the Preschool's legitimate interests, the Preschool must cease processing unless able to prove that the legitimate interests override those of the data subject, or that the processing is necessary for establishing, exercising, or defending legal claims (Article 21(1))

Upon receiving an objection where the processing is for the purpose of direct marketing the Preschool must cease processing. The Preschool shall bring these rights to the data subject's notice at the time of first communication.

Processing of Personal Data

Only personal data necessary for the specific purpose for which it was collected shall be processed. The quantity of data collected shall be proportionate to its purpose, the extent of the processing shall be kept to the minimum level as is necessary in accordance with the GDPR, the data shall be stored for as short a time as necessary in all the circumstances, and accessibility to such data shall only be made accessible to those requiring access to it for a legitimate purpose. The Preschool shall not provide any personal data to any parties outside of the Preschool for marketing purposes.

Processing of Personal Data by a third party

The Preschool shall only use the services of data processors able to offer sufficient guarantees to implement technical and organisational security measures to ensure that the processing meets the requirements of the GDPR and ensures the protection of the rights of the data subjects.

The Preschool shall enter into a written agreement with all data processors and such contract will include the following provisions: -

The subject matter, duration, nature and purpose of the processing; and

The type of personal data, categories of data subjects, and obligations and rights of the data controller.

Obligations on the processor to: -

Process personal data only on documented instructions from the Preschool unless the processing is required by UK law in which case the processor must notify the Preschool;

Ensure persons authorised to process the personal data are bound by appropriate confidentiality agreements;

Implement appropriate security measures as required by Article 32 of the GDPR;

Observe these provisions relating to the appointment of sub-processors;

Assist the Preschool in dealing with the exercise of affected data subject's rights;

Assist the Preschool in complying with its security and breach notification obligations;

At the end of the provision of services, either delete or return (at the Preschool's option) all the personal data processed under the arrangement to the Preschool; and

Provide all such information to the Preschool as may be necessary to demonstrate compliance with its obligations (as set out in Article 28), and allow audits and inspections by the Preschool or its nominated auditor (Article 28(3)).

An obligation upon the data processor to notify the Preschool of any breach of personal data.

Records of Processing Activities

The Preschool shall maintain a register of data processing activities in accordance with Articles 30(2) of the GDPR. The register shall be in writing and available to the ICO upon request in order for the ICO to monitor the processing operations.

The register shall include the following information in accordance with Article 30(1) of the GDPR: -

The name and contact details of the Preschool;

The purposes of the processing;

A description of: -

The categories of data subjects; and

The categories of personal data;

the protection of the rights of the data subjects.

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A description of: -

The categories of data subjects; and

The categories of personal data;

Part 2 below details the security measures in place to minimise the risk of them occurring.

If the Preschool suffers a personal data breach then the breach will be reported to the supervisory authority the ICO, and the affected data subjects (if the breach is high risk) in accordance with Articles 32 and 33 of the GDPR.

The Preschool has a data breach response procedure as set out in part 2 below and has trained staff in this procedure. The Preschool notes that data breach policies and processes should respond to the nature of the breach and risks arising from it, taking into account law enforcement authorities' interests where early disclosure could hamper an investigation.

When becoming aware of a breach the Preschool shall promptly inform the ICO within 72 hours. If it is not possible to inform the ICO within 72 hours the Preschool shall account to the ICO for the delay. If the breach is unlikely to result in a risk to the rights and freedoms of natural persons then the obligation to report does not apply. (Article 33(1) GDPR).

In accordance with Article 33(3) of the GDPR the notification of any breach to the ICO shall include the following information: -

- The nature of the personal data breach, including where possible the categories and approximate number of data subjects concerned, and the categories and approximate number of data records concerned;

- The name and contact details of the person dealing with the breach;

- The likely consequences of the personal data breach;

- The measures taken, or to be taken by the Preschool to address the breach including any mitigation measures.

Where a personal data breach is likely to result in a high risk to the data subject the Preschool must notify the data subject without delay in accordance with Article 34(1) of the GDPR. The Preschool will notify the data subject in clear and plain language and include the following information: -

- The name and contact details of the person dealing with the breach in the event that further information is required;

- The likely consequences of the personal data breach; and

- The measures taken, or to be taken by the Preschool to address the breach, including any mitigation measures.

However, the Preschool does not need to inform the data subject of a breach in the following circumstances:

- The personal data was subject to security measures that rendered it unintelligible to anyone not authorised to access it, such as encryption;

- The Preschool has taken measures to ensure the high risk to data subjects is no longer likely to materialise; or

- It would involve a disproportionate effort, in which case there must be a public communication.

If the Preschool has not already communicated the breach to the affected data subjects the ICO may direct the Preschool to do so and in which case the Preschool will comply with the direction.

Data Transfers

The Preschool shall not transfer any personal data to third countries outside the European Economic Area. Articles 44 to 50 of the GDPR relate to transfers of data to third countries or international organisations; therefore, these provisions shall not be relevant to the Preschool.

This policy shall be reviewed annually by the managers.

Date of creation; September 2021

Review due date; September 2022