

Appendix 15 Data Protection Impact Assessment (DPIA) - Screening Questions

Complete the following and return to info.requests@leicester.gov.uk

These questions are intended to help you decide whether a DPIA is necessary.

Answering “yes” to both/either of the first 2 questions indicates that a full DPIA will be required. Please complete the full form and send to info.requests@leicester.gov.uk.

Answering “no” to these 2 questions, but “yes” to any of the other questions is an indication that a DPIA would be a useful exercise. Please send the completed screening questions to info.requests@leicester.gov.uk (along with the full form if you choose to complete one.)

You should seek further advice and can expand on your answers as the project develops if you need to.

1) Will the project involve any high risk, special category or monitoring activities? e.g.

- Evaluation or scoring of individuals
- Automated decision making resulting in legal / significant effects
- Systematic monitoring e.g. internet tracking, CCTV cameras
- Large-scale processing (e.g. large numbers of records or data subjects, long length of retention, large geographical spread, city -wide)
- Data Matching
- Payments and other financial data
- Vulnerable people (including staff)
- Children (under 18)
- New technology e.g.: Use of smart cards, radio frequency identification (including mobile phone location, applications of global positioning systems etc.), visual surveillance, digital image and video recording, profiling, data mining, logging of electronic traffic etc.
- Service can be refused / withdrawn
- Sensitive (special category) data (race/ethnicity, political opinions, religious beliefs, trade union membership, health/ mental health, criminal, biometric, genetic, sex life/sexual orientation)

Yes

Payments and other financial data

Vulnerable people (including staff)

Children under 18

New technology

Service can be withdrawn

Sensitive

2) Will it have significant impact on the data subjects / service users? e.g. taking legal action against them.

Yes

The High Needs Block (HNB) funding model is being reviewed and is likely to change in 2021. This will affect how much funding is distributed to mainstream schools and settings within Leicester City. This may affect children aged between 4-12 with special education needs (SEND) as some schools will get more funding and some may get less. However, the overall aim is to ensure that per pupil funding is fairer and more equitable across all schools.

On application for element 3 it is likely, as now, that some applications will be accepted and therefore eligible for funding, but if they are rejected, schools will be supported in finding alternative solutions to care for their child or young person with SEND

We are also aiming to implement FIRMSTEP to ensure that the application process is more automated and enables a more efficient and transparent process.

The element 3 application process collates data on a child's SEND, age, gender and ethnicity. The project will be making no changes to the data it collates.

If the answer to any of the above questions is yes, consider the following:

3) Will it involve the collection of new information about individuals?

No

No new data will be collated, the current data sets are not being changed

4) Will the project compel individuals to provide information about themselves?

Yes

The project will collate data on the child's name, mainstream setting, age, gender and ethnicity, SEND and banding received (if applicable). This data is collated currently and there will be no change to the existing process

5) Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information?

No

There is no change to the existing process

6) Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?

No

There is no change to the existing process

7) Will the project require you to contact individuals in ways that they may find intrusive?

No

There is no change to the existing process

Step 1: Purpose

Explain broadly

- i) what project aims to achieve
- ii) what are the benefits of processing and
- iii) what type of processing it involves.

You may find it helpful to refer or link to other documents, such as a project proposal.

The project aims to review and revise the element 3 portion of the High Needs Block funding with the view to implement a more equitable distribution of funds for children with SEND across Leicester City. The aim is to create parity across all schools and focus on improving outcomes for those children with SEND.

The current process for making an application and the criteria for assessing it will not change, however, we will be creating a new Quality Improvement Team which will aim to:

- Implement the best endeavors and reasonable adjustment (BERA) framework and support schools in using the BERA principles prior to making an element 3 application
- Implement a Quality Review of the child's outcomes at regular intervals to ensure the funding received meets the needs of the child as described in the funding application
- Support schools in achieving positive outcomes for children and young people with element 3 funding in mainstream settings and schools

In addition, we will migrate from a manual application management process to an automated by implementing FIRMSTEP. This will ensure that referrals into the service will be processed, managed and tracked in a more efficient way.

Step 2: Describe the processing of the data

i) How will you collect, use, store and delete data?

All of the information about the pupils is currently stored on One.net / Sharepoint
Data is collated on an application form by heads of schools/SENCOs and sent via Anycomms to the LA. The LA add the data onto One.net if it not already there and store any supporting documentation on sharepoint.

There are no plans to change how the data is collected, used or stored.

Data is shared with selected professionals by using post, secure email, Anycomms.

ii) What is the source of the data?

All of the information about the pupils is currently stored on One.net / Sharepoint.

iii) Will you be sharing data with anyone? You might find it useful to refer to a flow diagram or other way of describing data flows

Data will be shared with healthcare professionals / those providing support/assessment at the panel.

iv) What types of processing identified as likely high risk are involved?

None.

Describe the scope of the processing

i) How much data will you be collecting and using? e.g. how many individuals are affected?

The panel meets fortnightly and processes 40 applications per panel. At each panel the following data is available:

Name

DOB

Sex

Address

Looked After Status

Identified SEND need

Attendance information

Prior academic attainment

Doctors / Educational Psychologists other professionals' assessments

Mental / physical health issues.

ii) How often?

The panel meets fortnightly.

iii) How long will you keep it?

In line with published corporate retention & disposal schedules.

iv) What geographical area does it cover?

Leicester City.

Describe the context of the processing

i) What is the nature of your relationship with the individuals?

The individuals applying for element 3 funding are from mainstream schools or settings and are aged between 4-12. (NCY R2-Y6.)

ii) How much control will they have?

Applications for element 3 will be co-produced with parents, SENCo's and the LA.

iii) Would they expect you to use their data in this way?

Yes.

iv) Are there prior concerns over this type of processing or security flaws?

No.

v) Is it novel in any way?

No.

vi) What is the current state of technology in this area?

In the LA we already use FIRMSTEP for referrals, we are looking to extend this service to include the Element 3 application process.

vii) Are there any current issues of public concern that you should factor in?

Parents/Carers and schools may be concerned with how the changes in funding will affect their child or young person. We are addressing this through our communications plan at the engagement stage, the consultation, stage and the implementation stage.

If an IT system is to be procured, please detail the technical controls of the system required: for example:

- Technical specification document
- Architecture infrastructure
- Hosting arrangements
- Data back-up arrangements and BCP
- Support arrangements
- Access controls
- Monitoring and audit controls
- Malware controls
- Authentication

We will use the existing FIRMSTEP solution, no additional procurement is required.

Step 3: Consultation

i) Describe when and how you will seek individuals' views – or justify why it's not appropriate to do so.

We have completed an engagement in June 2022 and a formal consultation in December 2022. We will be seeking Executive approval in April 2022 to implement the proposed funding changes.

ii) Who else do you need to involve within your organisation?

SEND Services.

iii) Do you need to ask your processors to assist?

No

iv) Do you plan to consult information security experts, or any other experts?

N/A

v) Will you do any public consultation?

Formal Consultation completed in December 2021.

Step 4: Lawful Basis

Describe the lawful basis for processing the data:

Which of the Article 6 and Article 9 conditions apply? Please say which are valid and what legislation allows you to operate in your service area. e.g. The Care Act, The Fraud Act, The Housing Act

Note: This section must be completed

GDPR Article 6 (for non-sensitive data)

a. Consent	Y For which processing:	Consent is given when an application for element 3 is made which enables the LA to process the applicant's data.
b. Contract (terms and conditions apply)	Y For which:	Once an application is submitted, we have to process it to determine whether the application for additional funding is accepted or rejected.
c. Legal Obligation (law says we must)	Y For which processing:	The provision of element 3 funding is discretionary; however, The Code of Practice provides statutory guidance on duties, policies and procedures relating to children and young people with special educational needs but no EHC plan: Children and Families Act Section 29 .
d. Vital Interests (life or death situation)	N For which processing:	
e. Public Task / Official Authority (law says we can)	Y/N For which processing:	Name of legislation: The Equalities Act 2010, the Families Act s29, and the SEND regulations 2014 aim to improve the outcome of all children and young people with special education needs.
f. Legitimate Interests (if outside public task)	N For which processing:	
Explicit Consent	Y For which processing:	Explicit consent is given when an application for element 3 is made which

		enables the LA to process the applicant's data.
Employment, social security or social protection law	Y For which processing:	Name of legislation: The provision of element 3 funding is discretionary; however, The Code of Practice provides statutory guidance on duties, policies and procedures relating to children and young people with special educational needs but no EHC plan: Children and Families Act Section 29.
Vital interest of data subject or another	Y For which processing:	Improvement of outcomes for all children and young people with special education needs and inclusion on mainstream settings.
Made public by data subject	N For which processing:	
Legal claims	N For which processing:	
Substantial public interest	Y For which processing:	Evidence of Public Interest: Element 3 applications are made to assess need based on physical or mental impairment.
Medicine, health or social care inc. safeguarding	Y For which processing:	Element 3 applications are made to assess need based on physical or mental impairment.
Public health	N For which processing:	
Research and statistics	N For which processing:	
Other national derogation in DPA18	Y For which processing:	Relevant schedule condition(s) in DPA18: Schedule 1, Part 2, 2-Health or social care purposes

		<p>Schedule 1, Part 2, 6- Statutory etc. and government purposes</p> <p>Schedule 1, Part 2, 18- Safeguarding of children and of individuals at risk</p> <p>Schedule 3, Part 3, 7- Social Work Data</p>
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Does the common law duty of confidentiality apply? How will this be addressed?

Yes. There is already a lawful basis for processing the data held.

Is Confidential Patient Information being processed and does the National Data Opt-Out scheme apply?

Confidential CYP information is being processed. The national data opt-out scheme does not apply.

Step 5: Assess necessity and proportionality

i) Is there another way to achieve the same outcome?
To receive element 3 funding a parent/carer or school must make an application either through a statutory assessment or via an Element 3 funding request.
ii) How will you prevent function creep?
This is an existing process, there is no scope creep in relation to data.
iii) How will you ensure data quality and data minimization
On application all data is reviewed, and quality checked. This is an existing process and no changes are being made to the data collated.

Step 6: Identify and assess risks

Risk	Solution(s)	Result: is the risk eliminated, reduced, or accepted?	Evaluation: is the final impact justified, compliant and proportionate response?

Fair, lawful and transparent

No legal basis. (inc. Art 6, Art 9, Common law of confidentiality,)	Compliance with the Council's obligations outlined at Section 4.	Eliminated	Yes
Not necessary or proportionate.	Part of the Councils role assessing how to administer funding.	Eliminated	Yes
Privacy Notice not given.	Processing is broadly covered by Council privacy notice.	Accepted	Yes
If consent-based processing, consent was not obtained and recorded.	Explicit consent is given when an application for element 3 is made which enables the LA to process the applicant's data.	Accepted	Yes

Purpose

Purpose creep: data used for something it wasn't collected for.	No, data was collected for element 3 application purposes and this remains the purpose.	Justified	Yes
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Data Minimisation

Too much data collected that's not necessary	Existing data is processed.	Eliminated	Yes
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Data accuracy

Inaccurate data collected.	Information is collected from subjects for element 3 application purposes.	Eliminated	Yes
Data corrupted.	Access is need-to- know only.	Eliminated	Yes

Retention and disposal

Data kept for too long.	Data is being retained per Council retention & disposal schedules.	Eliminated	Yes
No records of destruction kept.	To be documented as part of business processes.	Eliminated	Yes
Data can be deleted.	Yes (but only by authorized officers)	Eliminated	Yes

Security

Access controls not in place	Council 2-factor access controls in place.	Eliminated	Yes
Monitoring and audit controls not in place.	All accessed records will have an audit log with a timestamp.	Eliminated	Yes
Malware controls, patching, virus protection etc. not in place	IT undertake regular checks on virus protection and checking for viruses.	Eliminated	Yes
Authentication not strong enough.	No passwords will be shared with external users.	Eliminated	Yes
No written information sharing agreement in place with joint controllers/No written contract in place with data processors.	Compliance with the Council's obligations under legislation and appropriate controller-processor status define in contract with provider (Firmstep).	Eliminated	Yes
No BCP, recovery plan or backups in place.	BCP, Recovery plan and backup in compliance with the council policy.	Eliminated	Yes

Staff not adequately trained.	LCC staff who will be opening the record are all trained in using the system.	Eliminated	Yes
Theft of data.	No passwords will be shared, nor data downloaded .	Eliminated	Yes
Unpermitted access by third party / employee.	All data will be logged and time stamped so we can review the usage.	Eliminated	Yes
Poor physical security	Access controls in place at Council properties. All visiting officers will provide ID for identity to be confirmed before access is provided.	Reduced	Yes

Data subject rights

Data subject requests are not responded to in required timescales.	Ensure that we responded in the standard timescales we have in place.	Eliminated	Yes
Complaints are not answered	All requests are answered within the timescales.	Eliminated	Yes
Data can be deleted (if applicable).	All requests are answered within the timescales.	Eliminated	Yes

Data can be amended (if applicable)	All requests are answered within the timescales.	Eliminated	Yes
Data can be restricted (if applicable).	All requests are answered within the timescales.	Eliminated	Yes
Data is portable & in machine readable format (if applicable)	All requests are answered within the timescales.	Eliminated	Yes
For Adult Social Care/Public Health: National Data Opt-Out not applied	N/A	Eliminated	Yes

Transfer outside UK/EEA/Gibraltar/Appropriate country

Data transferred or stored outside UK/EEA/Gibraltar/Appropriate country e.g. in cloud without adequate safeguards	Stored on Council servers in UK/EEA/Gibraltar/appropriate country, under <u>appropriate</u> contractual relationship.	Eliminated	Yes
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Backups held outside UK/EEA/Gibraltar/Appropriate country without adequate safeguards	Backups in UK/EEA/Gibraltar/appropriate country, under contractual relationship. Avoid USA hosting.	Eliminated	Yes
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Step 7: Sign off and record outcomes

DPIA Reference Number: 23308

Item	Name/date	Notes
Measures approved by:		Integrate actions back into project plan, with date and responsibility for completion
Residual risks approved by:		If accepting any residual high risk, consult the ICO before going ahead
DPO advice provided:	<p>The Council is data controller for this process and has a lawful basis for appropriate processing to occur.</p> <p>Firmstep (system provider) are a contracted processor.</p> <p>Processing is not automated decision-making (decisions are made by a panel).</p> <p>Subject to recommendations being actioned, processing can proceed.</p> <p>Iain Harrison 24.06.2021</p>	DPO should advise on compliance, step 6 measures and whether processing can proceed

Summary of DPO advice:

1. The Council departments involved must ensure lawful basis is adhered to.
2. The involved Council departments to ensure that data subjects (applicants) receive appropriate privacy notices, outlining the processing.

3. The involved Council departments must be able to facilitate subject rights in respect of this activity, including the deletion or restriction of data in case of a right to erasure / restriction request from a data subject.
4. Ensure appropriate procedures and training in both Data Protection and system use by Council staff involved.
5. Suitable access to recorded information is provided to appropriate staff/roles in involved Council departments; and
6. Information is processed securely and appropriately via controlled meeting during visit.
7. System supplier (Firmstep) is already engaged with a suitable contract, containing Data Protection clauses and schedule; and
8. Any variation occurring as a result of this processing to be identified.

DPO advice accepted or overruled by:

If overruled, you must explain your reasons

Comments:

Consultation responses reviewed by:

If your decision departs from individuals' views, you must explain your reasons.

Comments:

This DPIA will kept under review by:

The DPO should also review ongoing compliance with DPIA.

Does the corporate Privacy Notice need updating?	Y/N	To be actioned by:
Does the Records of Processing Activities (ROPA) need updating?	Y/N	To be actioned by:

Review / Monitoring Log

Date Reviewed/ Monitored	Comments	Actions