

Cross Association Code of Practice for Schools

(from September 2025, for review June 2026)

1. The Code's status

- 1.1. This Code sets out principles agreed by the five Heads' Associations (GSA, HMC, IAPS, ISA and the Society of Heads) in relation to the expected conduct and good practice that their members are asked to follow in relation to pupils attending, or seeking to attend their school and staff employed, or seeking to be employed by them.
- 1.2. The principles of this Code are underpinned by the desire to act in the best interests of pupils attending or seeking to attend Association schools.
- 1.3. The Code is designed to reflect principles of fair competition in line with UK competition law and does not inhibit freedom of choice for parents, pupils and staff.
- 1.4. Each Association has its own Code and/or membership requirements which apply directly to schools in its membership. Each Association agrees that, in applying and interpreting its own codes, it will observe the principles set out in this Code.
- 1.5. There may be occasions when schools find themselves in dispute on professional or ethical issues that are subject to this Code or to individual Association Codes. In all cases where disputes arise, schools are expected to make every effort to resolve them through discussion with related schools, regardless of the association. Ultimate responsibility for compliance with the Code rests with the Head as the Member of the Association.
- 1.6. If schools are unable to resolve disputes between themselves, the Association or Associations to which they belong will be asked to mediate and advise. In so acting, each Association will apply the letter and spirit of the principles set out in this Code consistent with applicable English legal principles of interpretation.

2. Ensuring high standards

- 2.1. Schools must fulfil all the legal requirements to which they are subject and ensure fair, honest and transparent dealings with parents, staff and colleagues in independent and maintained schools as well as external bodies.
- 2.2. Members should adopt good communication practices with parents. Parents and prospective parents should be given clear and transparent information regarding fees, deposits, financial assistance, admissions policy, periods of notice and other matters.

Communications with parents

- 2.3. Schools should make known their admissions policy, and annual arrangements, including:
 - 2.3.1 scholarships, bursaries and other financial assistance;
 - 2.3.2 the number of places likely to be available at each stage of entry; parents, with the advice of Heads of feeder schools, will then be able to make decisions on the basis of sound information;

2.3.3 other factors affecting entry e.g. number of boarding places available for boys and girls (bearing in mind the Equality Act 2010), number of scholarships and bursaries at each age group; and

2.3.4 general procedures and criteria for entry.

2.4. Schools are advised to announce any changes which they are making to their entry profile as early as possible so that feeder schools and prospective parents can make decisions in the best interest for children in a timely manner.

Relationships with other schools and other institutions

2.5. Members operate in a competitive environment. However, schools should adopt a fair and professional attitude and try to ensure good relations within the limits of fair competition.

Advertising and marketing

2.6. Marketing and publicity policies should be adopted that ensure fair practice between schools. Advertisements and other promotional material must be factually accurate, must not make improper claims and must comply with the law.

2.7. If a school intends to compare itself or its services in any manner which, either explicitly or by implication, identifies another school or schools, it must ensure compliance with comparative advertising law.

3. Recruitment of staff

3.1. When recruiting and appointing staff, dealings should be fair, honest and transparent. Schools should not induce employees of other schools to breach their contractual obligations towards their existing employer.

4. Admission of pupils

General principles

4.1. Schools in the independent sector vary greatly, meaning that an appropriate school can be found for all children. It is essential for children's welfare that parents and schools make the right choice, so that children join schools that are suitable for them.

4.2. To support this, all schools **should:**

4.2.1 Make known their admissions policy, including the process and criteria that will be applied.

4.2.2 Announce any changes to their policies and procedures well in advance of those changes taking place.

4.2.3 Make known the number of places likely to be available at each stage of entry.

4.2.4 Avoid any suggestion that failure to take up a place at a particular age may make it difficult to obtain a place at a later stage, unless such statement is based on realistic projections.

4.3. All schools **may:**

4.3.1 Accept registrations at any stage in advance of proposed entry.

4.3.2 Charge a non-returnable registration fee to offset administration costs.

4.3.3 Seek a deposit to confirm a registration: the amount should be set to reflect any losses that the school might suffer if the parents failed to honour the contract with the school.

4.3.4 Either deduct the deposit from fees when the pupil takes up their place or hold the deposit until the pupil leaves the school.

4.4. Schools should consider whether it is fair to retain the deposit if the pupil does not take up the contracted place, or whether it would be appropriate to issue a full or partial refund, particularly if the school has not suffered any financial loss as a result. If the school has not suffered any financial loss, schools should be aware that failure to refund the deposit may be a contractual penalty, unenforceable under English law.

Assessment and entrance examinations for senior school entry

4.5. The following two points apply to entry at all ages. Additional requirements and key dates for 11+, 13+ and 16+ admissions are set out in sections 4.5, 4.6 and 6.

- It may be reasonable to give an indication of the suitability of a child for school during a preliminary visit.
- However, unconditional offers or promises of places should only be given after the completion of the admissions process (which may involve assessment, examination, entrance examination and references).

Key dates for 11+, 13+ and 16+ admissions

4.6. These dates apply to applicants in the UK only.

Key date	Application stage	Age/transfer point that this applies to
Up to eight and a half terms before entry	First date for entry tests for 13+ entry (Common Entrance candidates only)	13+ (Common Entrance candidates)
1 st October in the year prior to the academic year of entry 2025: Wednesday 2026: Thursday 2027: Friday	First date for formal entrance examinations	11+
1 st October in the year prior to the academic year of entry 2025: Wednesday 2026: Thursday 2027: Friday	First date for sending reports on Year 11 pupils seeking transfer to another school	16+
1 st October in the year prior to the academic year of entry 2025: Wednesday 2026: Thursday 2027: Friday	First date for selection interviews/examinations for Year 11 pupils	16+
1 st December 2025: Monday 2026: Tuesday 2027: Wednesday	First date for offers of places, scholarships or bursaries for Year 11 pupils	16+

8 th December 2025: Monday 2026: Tuesday 2027: Wednesday	Date before which schools cannot require parents' acceptances of offers to Year 11 pupils	16+
1 st January in the year prior to the year of entry 2026: Thursday 2027: Friday 2028: Saturday	First date for acceptance of non-returnable deposits for 13+ entry (i.e. 20 months in advance)	13+
Midday on the first working weekday in March (in 2026, this date will be Monday 2 March; in 2027, this date will be Monday 1 March; in 2028, this date will be Monday 3 March)	The earliest date on which schools can require acceptance of offers for senior school places relating to 11+ and 13+ (non-Common Entrance candidates) entry in the following academic year including scholarship awards. Offers can be made to parents and accepted by them before this date, but acceptance cannot be required. When an 11+ or 13+ (non-Common Entrance candidate) offer is made, it remains open until the deadline.	11+ 13+ non-Common Entrance candidates

Guidance notes

- All schools must observe midday on the first working weekday in March as the earliest time and date on which schools can require acceptance of offers for senior school places relating to 11+ entry in the following academic year. Offers can be made to parents and accepted by them before this date, but acceptance cannot be required.
- When an offer of a place is made, it remains open until this time.
- Assessments for scholarship awards can take place throughout the academic year, and for different entry points, though they should not take place on an ad hoc basis. Normally they will be in the autumn and spring terms and in the summer term by exception. Schools should note that the first working weekday in March date still applies for 11+ and 13+ scholarship awards except Common Entrance. (See table above.)
- It is important that all schools adhere to these dates in the interests of children and parents.

Further information on 13+ admissions

4.7. The following protocols apply for 13+ admissions:

4.7.1 Deposits

- Schools should note the key dates above relating to deposits, i.e. that non-returnable deposits for 13+ entry should not be taken before 1 January in the year before entry (20 months before).

- If deposits are required more than 20 months before entry, schools should inform parents in writing that they are entitled to a full refund of the deposit until 20 months before.

4.7.2 **Early entry tests and assessments**

- Some schools may wish to hold entry tests for 13+ entry up to eight and a half terms before entry, to enable parents to assess the likely success of an application and/or the most appropriate point of transfer, and for schools to test for bursaries and scholarships.
- These early tests should not be used to stop other schools from competing for any of these pupils.
- Parents of pupils taking such tests must be informed that they are not committed to taking up a place until the date when other parents are required to confirm their place with a deposit.

4.7.3 **Common Entrance**

- Schools using the Common Entrance examination must abide by the regulations set down by the Independent Schools Examination Board (ISEB). The regulations can be found [here](#).
- In particular, schools should note the guidance on publication of Common Entrance results.

Further information on 16+ admissions

4.8. See section 6 below.

5. Transfer between schools – (all ages)

5.1. The Code sets out best practice to ensure a smooth transition for every child with the following recommendations:

(a) Notification

- It is essential to have close liaison between Heads at all stages in the transfer and admission processes for pupils of all ages, whether at a normal transition point or at any other time, including where a late application has been made.
- Parents should be asked by the receiving Head to keep the current Head fully informed of any applications they are intending to make, whether at a normal transition point, or at a time when transition is not the norm for most pupils. Parents may be reluctant to talk to their child's current school about a move, but the choice of school lies with them and their son/daughter. They should be assured that any question of transfer would be handled professionally and with care by both schools involved.
- Schools should act in the best interests of their pupils, and no pupil should be placed under pressure by staff or made to feel uncomfortable once interest in a change of school has been declared.
- A request should be made to the Head of the current school for information relevant to the candidate's application and transfer as appropriate. References should be provided swiftly. Schools will need to ensure they have a lawful basis to share information under the Data Protection Act 2018 (see Appendix 1).

- If a reference is marked as confidential, it will be expected that it will not be shared by either School with the parent or pupil, in line with the exemption under the Data Protection Act.
- Parents should be asked to notify the existing school of the outcome of an application to a new school as soon as possible.
- Nothing in this Code precludes conversations taking place between the head of the current school and the head of the receiving school over an application of a prospective pupil. Heads are advised to ensure that they comply with data protection obligations when having such conversations and that they have the necessary documentation in place. Please see Appendix 2 for a summary of the data protection obligations.
- School may wish to consider KCSiE para. 122 which states:
In addition to the child protection file, the designated safeguarding lead should also consider if it would be appropriate to share any information with the new school or college in advance of a child leaving. For example, information that would allow the new school or college to continue supporting children who have had a social worker and been victims of abuse, or those who are currently receiving support through the 'Channel' programme and can have that support in place for when the child arrives. More information on the child protection file is in Annex C.
- The current school must ensure that the pupil's child protection file (if any) is transferred to the new school or college within 5 days of them joining the new school roll, and not before they have left their current school. It should be transferred separately from the main pupil file. The transfer of the child protection file is a statutory obligation (see KCSiE 2025 para. 121) and, as such, all schools must comply with this duty. Schools must ensure any data that is processed is done in line with the principles of the Data Protection Act i.e. securely and confidentially. Note: the child protection file must not be sent to a school who wishes to view it before offering a place.

(b) Notice and fees

- Most schools require a full-term written notice of termination. If contractual notice is not given, fees in lieu of notice will be payable. Even when a late application is made, the receiving school should still contact the feeder school for a report and to establish that financial obligations have been met (below).
- There are good reasons for checking that the parents of a transferring pupil have paid or are expected to pay any outstanding fees due to the pupil's current school:
 - The Governors of the receiving school owe a duty to their school to ensure they are not taking on a risk of bad debts unnecessarily;
 - The receiving Head will wish to avoid the disruption to the education and welfare of a child who has to be excluded from non-payment of fees very soon after arriving at a new school.
- Schools are therefore strongly encouraged to include in their contracts the right to pass on information about unpaid fees. Legal advice may need to be taken

on the data protection requirements and appropriate wording as explicit consent will be needed, but in summary the recommendation is that schools:

- Include in the school contract or other documentation the authority from parents for information about unpaid fees to be passed on to the next school if the pupil is transferred.
- Make it clear in their admissions documentation that they reserve the right to establish from any previous school that all fees have been paid.

6. Particular arrangements for Sixth Form Pupils Studying in the UK

- 6.1. For schools with their own Sixth Form: As with transfer at any age, parents should be advised by the receiving Head to consult the Head of their child's current school fully when considering whether to apply for a Sixth Form place at another school. Schools will want to remind parents of Year 11 pupils to keep the Head fully informed of the progress of any application that pupils may decide to make, especially if an offer is accepted elsewhere, and ensure that the contractual notice period is observed, if the pupil decides to leave at the end of Year 11.
- 6.2. *For all schools:* It is not unreasonable to suggest to Year 11 pupils that they should limit the number of applications which they make for Sixth Form places, given the disruption caused by multiple applications during such an important period of academic study. Any preliminary visits/ Open Days should be arranged so as to cause the minimum amount of disturbance to a pupil's work.
- 6.3. References from the pupil's current school will not normally be sent to a prospective Sixth Form provider before the beginning of October in Year 11 (i.e. the year in which he/she expects to complete GCSE examinations).
- 6.4. Selection interviews and/or examinations should not be held before the beginning of October in the pupil's Year 11 and offers of places, including bursaries and scholarships, should not be made until midday on the 1st of December or the first working day thereafter. Offers of a place may be accepted on behalf of the pupil at any time but, in order to allow parents and pupils sufficient time to consider all offers which have or may be made, schools must allow a reasonable time (and in any event no less than one week) before requiring the acceptance of any offer (i.e.: not before 8th December).
- 6.5. For the avoidance of doubt, the rules above do not apply with regard to pupils studying overseas in Year 11 and proposing to enter the UK for Sixth Form.

7. Scholarships, bursaries and other financial assistance

- 7.1. The following definitions apply:
 - Bursaries: Fee reductions made solely as a result of means-testing;
 - Scholarships: Awards made on merit;
 - Other Financial Assistance: Discretionary funding offered, usually as a result of means-testing but which may include concessionary fees available to certain sections of the public, e.g. siblings, staff members, members of the armed forces or clergy
- 7.2. It is expected that Association Members will do the following:
 - Ensure that Scholarships are advertised properly and awarded in open competition and at specific times of the year (rather than on an ad-hoc basis) in order to maintain fairness and transparency;

- Ensure that Scholarships once offered are honoured and are not subject to amendment, other than by means-testing or in cases where the parent(s) reject all or part of the Scholarship;
- Ensure that Scholarships are awarded by the receiving school, rather than by a third party (e.g. a feeder school);
- Publish details of concessionary fees available, including sibling/ staff discounts;
- Ensure that Bursaries are only given on the evidence of a full disclosure of financial circumstances and that the Headteacher and/or Bursar makes every reasonable effort to ensure that applications are based on genuine need.

7.3. Schools are strongly encouraged to do the following:

- If they are charities, review their policies on scholarship awards in the light of the need to demonstrate public benefit.
- Review bursaries which have been awarded to individuals regularly (e.g. annually or biennially) to ensure that recipients' financial circumstances remain such that they are deserving of a means-tested Bursary

Appendix 1

Data Protection Act and Pupil References

Opinions

- 1.1. The Data Protection Act 2018 (the Act) and the EU General Data Protection Regulation (GDPR) regulate the processing of personal data. Personal data means any information relating to an identified or identifiable natural person. A reference, by its very nature, is likely to include facts and opinions about an individual and both fall within the definition of personal data. The Act does not lay down specific rules about what should or should not be recorded. In many cases the person giving the reference will have a duty of care to the person who is the subject of the opinion. They will need to decide what information they need to record to fulfill this duty, and they will use their professional judgment to do this. However, the Act does lay down standards that should be followed.
- 1.2. When an opinion is given in writing, good practice recommended from the Information Commissioner includes the following:
 - 1.2.1. Make it clear that it is an opinion. The record should show who gave the opinion and when.
 - 1.2.2. If possible, provide contact details.
 - 1.2.3. Structure the record so that if someone objects to its accuracy, their view or challenge can be included in such a way that it is given proper weight.
 - 1.2.4. Have a records policy that lays down the criteria that should be considered for continuing to keep the information or, where appropriate, specific retention periods for certain categories of information (see paragraph 1.6 below).
 - 1.2.5. Make sure that when an opinion is disclosed it is not presented as fact.
- 1.3. **Confidentiality:** If the reference is intended to be confidential, it is important to preserve the reference's necessary "quality of confidence" by making it clear that the reference should be treated as confidential and not freely disseminated. Whilst identifying a reference with a confidentiality marker does not of itself render the content confidential, it does provide evidence that the reference is intended to be given and received in confidence.
- 1.4. **Lawful Basis:** Seeking or providing a reference will involve the processing of personal data and in order to process personal data lawfully, the School will need to identify a relevant legal ground from the six legal grounds listed within the GDPR. If the reference contains special category personal data, the school will also need to identify an additional legal ground from a separate list of ten legal grounds for processing special category personal data. The legal grounds that are most likely to be relevant to process a reference containing general personal data are (i) with consent, (ii) because the reference is necessary for a contract and (iii) the processing is necessary for the purposes of the legitimate interests of the school providing these do not outweigh the rights and freedoms of the individual or involve special category personal data. If the reference contains special category personal data such as information about the pupil's health, the legal ground that is likely to be relevant is "explicit consent". The practical effect of this is that if a reference will or is likely to include special category personal data then explicit consent should be obtained. Explicit consent must be affirmed in a clear statement, whether oral or written. If the pupil agrees verbally that the Head's reference can include some special category personal data, it is important that you keep a written record of the "script".

- 1.5. **Accuracy:** Personal information should be accurate, and where necessary kept up to date. The standard of care is high and the author of a reference must take every reasonable step to ensure that the information provided is accurate. This requirement will be met if a record accurately reflects a professional opinion. The Act and the GDPR cannot be used to challenge a professional opinion on the basis that it is inaccurate just because another person may have a different opinion. However, if the opinion contains factual information that is incorrect then it could be challenged. If it transpires that factual information was inaccurate the School will need to rectify the error. A challenge to a factual inaccuracy or the reliability of an opinion may be recorded alongside it, since it will usually be important to maintain the original record.
- 1.6. **Adequacy/relevance:** The personal information provided in the reference should be sufficient for its intended purpose and restricted to what is necessary in relation to the purpose. It should not include irrelevant material. This does not mean that someone can demand an opinion to be deleted because they think it has taken account of irrelevant information, or not taken account of information they think is important. It does mean that when an opinion is recorded, it (or the context in which it is held) should contain enough information to allow a reader to be able to interpret it correctly. For example, the date, the name and position of the author should be made clear. Where an opinion is likely to be controversial or very sensitive, or when it will have a significant impact when used or disclosed, it is likely to be even more important to explain the circumstances, or evidence on which the opinion is based.
- 1.7. **Retention:** Personal information should not be kept in a form which identifies an individual any longer than is necessary in order to do the job it is intended for, unless there is another valid need to keep a comprehensive record. Individuals may ask for an opinion to be deleted which they think is irrelevant or unjustified (for example, because they have obtained a second opinion which contradicts the first) or its retention is no longer required. Under the GDPR, individuals have a legal right to request that their personal data is erased in certain circumstances, such as where the personal data has fulfilled its purpose and retention is no longer necessary or where the individual withdraws their consent and consent was the legal basis upon which the information was being held. However, this is not an absolute right and organisations and practitioners will need to consider if they need the information for the adequacy of the record and for their own purposes. For example, they may consider that the information needs to be kept to explain action that was taken at a later stage or in connection with legal claims.
- 1.8. The ISBA has a guidance note on their website for use by member schools which details the legal requirements for independent schools. There is a useful table which lists the timeframe of retention for each type of information held by schools. Alternatively, the Information and Records Management Society (IRMS), a professional association concerned with records and information management, publish a [Records Management Toolkit for Schools](#). This was originally created to assist maintained schools in their compliance with their statutory duties under data protection, freedom of information and other laws applicable to local authority controlled schools. The IRMS is currently developing a module specifically for independent schools but until this is available, independent schools using the toolkit will need to bear in mind that certain parts of the current version of the toolkit will not be relevant to them.

Disclosure

- 1.9. Under the Act and the GDPR, data subjects are entitled to request a copy of their personal information that was supplied in a reference. This right is specifically given to data subjects

and is known as the right of subject access. However, where a pupil reference has been given (or is to be given) in confidence, schools are entitled to rely upon Schedule 2 of the Act (see paragraph 1.11 below) which expressly exempts confidential references given or to be given for education purposes from the subject access request provisions of the Act. This means that the pupil, who is the data subject of the reference (or a third party requesting it on their behalf, such as a parent), cannot require either the school that has authored or received the reference to disclose it to him/her.

- 1.10. Heads should note that the exemption from the right of subject access that applies to confidential references is materially different under the new Act. Under the old Data Protection Act 1998, the exemption was only available to the school providing the reference and not the school receiving it. Under the new Act, providing the reference is confidential, the exemption from the duty to provide a copy under the subject access provisions is available to both the school that provided it and the school that received it.

This, however, is subject to a further caveat: the right of subject access only extends to the data subject's own personal data and not to personal information relating to other people. Where the reference also contains information that identifies another individual such as another pupil and that individual has not consented to the disclosure of their information, then the reference may be withheld unless considering the circumstances, it is reasonable to disclose the reference without the consent of the other identifiable individual. The practical outcome of this is that when the school is considering a subject access request for a reference, if the reference contains information that identifies a third party, it should first try and edit out (or redact) the information that identifies the third party. If doing this leaves the document unintelligible, the school could seek the third party's consent to release their data to the requestor. If that consent isn't forthcoming or seeking consent isn't a reasonable option then the subject access request may be refused unless its disclosure is reasonable in the circumstances. Whether or not disclosure without the third party's consent is reasonable will depend upon a range of different factors such as whether disclosure would adversely affect the third party's own rights and freedoms and whether the School owes a legal duty of confidentiality to the third party. In deciding this, the school will have to balance the pupil's right to access his or her reference against the third party's privacy rights regarding their own information.

In most cases, a school would not usually be entitled to withhold a reference on the basis that its disclosure to the pupil would reveal third party personal data in circumstances where the third party was a member of staff including the author of the reference.

- 1.11. Subject to the restrictions that will apply to third party personal data, in most situations, Heads that receive a subject access request for a reference will be expected to disclose the reference to the pupil or the person that is making the request on behalf of the pupil, such as the parents.

- 1.12. The relevant paragraph of Schedule 2 to the Act provides:

"The listed GDPR provisions* do not apply to personal data consisting of a reference given (or to be given) in confidence for the purposes of the education, training or employment (or prospective education, training or employment) of the data subject..."

*The relevant GDPR provisions include Articles 5 and 13-15 inclusive, i.e. a confidential reference is exempt from the right of subject access and also the school's duty to provide privacy information. However, the School still needs a legal ground to provide a reference such as consent.

Appendix 2

Data protection obligations on discussions between heads on transition

The summary is that a head may have conversations with the head of a prospective onward school about a pupil, provided a lawful basis is determined, documented, and shared with parents. This is because these conversations will involve the sharing of personal data relating to the child, such as facts or opinions about them and their suitability for the potential onward school. That data should only be shared if it is necessary for a legitimate interest, or if consent has been given.

Relevant data protection principles

When schools enter into pre-offer discussions about pupils, they are very likely to share personal data about 'data subjects', i.e. those pupils. This is a form of data processing. As controllers of this personal data, schools will need to consider and meet their obligations under data protection law, including compliance with the seven data protection principles.

One of these principles is that the data is processed lawfully, fairly and in a transparent manner in relation to data subjects. Therefore, it is crucial that schools identify and record their 'lawful basis' for sharing pupil data with other schools.

There are six available lawful bases for processing personal data and the most likely to apply in this scenario is either the **consent** of the pupil (or their parents if they are young) or the **legitimate interests**, usually of the schools concerned.

1. Consent

Valid consent requires a positive action or 'opt-in' and it must be freely given, specific and 'granular'.

Consent would be needed from the parent, and if the child is old enough to give valid and informed consent (approx. 12-13 years old), from the pupil.

Practically speaking, this would mean schools seeking and receiving the consent of pupils (and/or their parents as above) either on an ad hoc basis or through an overarching 'umbrella' consent received in relation to all approaches from prospective schools. This can be received through a consent form which should explain to pupils (and parents) how their personal data will be shared and otherwise handled by the school. It is not sufficient to rely on a provision in a school's parent contract to obtain consent as it is not separated out from other provisions agreed within the contract (furthermore it is agreed by the parents, not the pupil which may be needed if they are older).

2. Legitimate interests

This is the most flexible lawful basis for processing personal data. Schools will need to be open with pupils (and parents) about this processing and only share information they would reasonably expect would need to be shared to safely rely on this lawful basis.

To determine whether 'legitimate interests' can apply, a three-part test should be considered:

- a. **Identity the legitimate interest(s)** relied on. In this case it will be the pupil's interests in securing a place at a school that is right for them.
- b. Show that the processing (in this case the passing of the personal data to prospective schools) is **necessary to achieve those aims**, i.e. it should be proportionate with no less intrusive way of achieving the same result. Sharing of pertinent information, eg professional judgments about a pupil's suitability in a setting, is likely to be necessary to achieving legitimate interests.
- c. **Balance** the legitimate interests identified against the pupil's rights, interests, and freedoms, to ensure sharing the data does not cause unjustified harm to the individuals concerned. Schools should also be open with parents about this data sharing before it happens.

This three-part test is known as a 'legitimate interests assessment' ('LIA'). This should be completed and filed internally before a school decides to rely on the lawful basis of legitimate interests for these conversations.

The ICO has produced a template LIA for this purpose:

<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/lawful-basis/legitimate-interests/how-do-we-apply-legitimate-interests-in-practice/>

It will also be helpful to include provision in the parent contract which refers to the sharing of this information.

Special category data

There are extra protections around special category data ('**SCD**'), which would include personal data about a pupil's health and special educational needs. In most cases, SCD should only be shared where explicit consent is given. It is recommended that medical or health information should only be obtained from the parents. Legal advice may be needed.

What do schools need to put in place to ensure compliance?

- a. **Transparency:** schools should be open with pupils and parents about how, why and when these conversations take place. This explanation can be included in a privacy notice and/or in communications with these individuals in the usual course of school operations and interactions with families.
- b. **Consent:** where consent is relied on as a lawful basis for these conversations, careful consideration should be given as to how this is sought and received to ensure it is valid. It should also be recorded.
- c. **Data minimisation:** The pupil data shared should be kept to the minimum needed to achieve the identified aims. Information that you may want to know about but which is not necessary to achieve these aims should not be provided.
- d. **Purpose limitation:** it should be clear why you are sharing pupil data with a prospective school which should be for legitimate reasons.
- e. **Record keeping:** Schools should document pre-offer conversations with prospective schools and file them appropriately.

- f. **Retention:** Generally speaking, a school's retention period for pupil references will be suitable for notes of pre-offer discussions with prospective schools. This is subject to the overriding data protection consideration that personal data should not be retained for longer than is necessary.
- g. **Subject access requests:** schools should be aware that parents and pupils can seek access to their personal data. It may be arguable that this information forms part of a confidential reference which is exempt from disclosure under data protection law however the ICO guidance advises transparency wherever possible. This is because it can have an impact on an important decision, in this instance whether to offer a pupil a place. Parents who challenge schools' references in court are likely to gain access to this information in any event as part of the disclosure process. Schools should also keep in mind other rights that pupils and parents can exercise under data protection law such as the right to have their data corrected or erased.
- h. **Documentation:** This is linked to the transparency point above. It is important that schools consider when and where parents and pupils can be informed about pre-offer conversations, such as a privacy notice and parent contract. Schools seeking to rely on 'legitimate interests' should complete and file a LIA as set out above.