



Aldercar High School

DPIA: Covid-19 Lateral Flow Testing in Schools

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Introduction

UK Schools have been advised to carry out Lateral Flow Testing on Pupils and Staff at their school as part of the Government Strategy to respond to Covid-19. Guidance provided by the Department of Education (DfE) has changed over recent weeks, but the current advice is that schools are invited to participate in the testing programme if possible. Secondary and Special Schools are invited to carry out the testing for staff and students at their premises to detect asymptomatic cases of Covid-19. For Primary Schools the testing is carried out by staff members on themselves at home, but they are requested to submit their results directly to the Department for Health and Social Care (DHSC) at <https://www.gov.uk/report-covid19-result> as well as reporting to the school for their record keeping.

This Data Protection Impact Assessment (DPIA) forms part of an overall 'pack' of advice and template provided by DCC. This document specifically looks at the data protection risks of the project. As Data Controllers, schools are advised to carry out DPIAs for "high risk" processing. This document is designed to discharge that responsibility to assess data risks and the mitigations that can be put in place. The DCHC and the DfE also act as Data Controllers. The DfE has provided schools with a number of documents, including template Privacy Notices and Consent Forms. In the template privacy notice, DfE stated that the appropriate lawful basis was "Legitimate Interest". Where Legitimate Interest is used, a Legitimate Interest Assessment (LIA) must be carried out. DCC asked the DfE to provide a copy of their own DPIA and LIA but this has not yet been received for review (as at 26.1.21). DCC is producing a LIA for schools and this will be made available for schools as soon as possible.

The Lateral Flow Testing scheme requires the school to process personal data, some of which is defined as "Special Category" data. The requirements of Data Protection legislation to assess the lawful basis for data processing, sharing and to ensure that Data Protection laws and principles are followed still apply, even where schools are have been advised to carry out the data processing by the Government.

Privacy notice templates and Terms and Conditions documentation provided by the DfE for the Lateral Flow testing project state that schools are Data Controllers for this project. Schools have very little control over what data they collect for the project, and only control a small part of the testing process. This DPIA focuses on the risks and mitigations for the role of the school in the project.

Screening questions

Will the project involve the collection of new information about individuals? If yes, please detail the information to be collected/shared.

Data will be shared with the Department for Health and Social Care (DHSC) and the DfE. The personal data to be collected is set out in the relevant Privacy Notice, but includes first name, last name, year group (pupils only), date of birth, gender, ethnicity, whether the data subject has Covid-19 symptoms, home postcode, email address, mobile telephone number, name of parent/guardian (for pupils only) and details of any health or accessibility issues which might affect the safe participation in the testing exercise.

What is the lawful basis of the processing?

The template Privacy Notices provided by the DfE state that lawful basis for processing this information is that processing is necessary for the purposes of the legitimate interests under Article 6(1)(f) of GDPR pursued by the school, the DfE and the DHSC; and for the processing

of special category data, Article 9(2)(i) of GDPR, where it is in the public interest on Public Health Grounds. This data is processed under the obligations set out in Public Health legislation (Regulations 3(1) and (4) of the Health Service (Control of Patient Information) Regulations 2002 which allows the sharing of data for Covid related purposes. Article 9(2)(h) where the processing is necessary for the purposes of preventive or occupational medicine, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems.

Consent is sought from data subjects to allow the tests to take place, but this is medical related consent, not data protection related consent.

Will the project compel individuals to provide information about themselves? If yes, please detail the information to be provided.

No individual is compelled to provide information about themselves or participate in the testing programme itself. Where a data subject refuses to participate, some details of their non-participation will be recorded in order to have a record of the decision and to reduce unnecessary contact with that person regarding testing.

Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information? If yes, please detail which organisations will be provided with access.

Yes. The school will be sharing data with the DfE and DHSC as well as staff and volunteers at the school who will not previously have had access to this personal data.

Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used? If yes, please describe the new purpose below.

Yes, the new purpose is to run a Covid testing programme and to share the results of that with the DfE and DHSC.

Does the project involve you using new technology that might be perceived as being privacy intrusive? For example, the use of biometrics or facial recognition. If yes, please detail the new technology, below.

No.

Will the project result in you making decisions or taking action against individuals in ways that can have a significant impact on them? If yes, please describe the impact, below.

The test result may indicate a potentially positive Covid diagnosis, following which a data subject would need to obtain a further confirmatory Covid test, they would need to self-isolate pending the outcome of the second test result. The impact of a positive test on an individual may be significant, and this is discussed further below. However, it is important to recognise that it is not the test itself, but the presence of the virus that may have a significant impact on an individual and that if the tests were not carried out, then further individuals may become infected by the virus and that would have even greater impact.

Is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For example, health records, criminal records or other information that people would consider to be private. If yes, please describe the information to be collected, below.

The data collected will contain ethnicity and health data, classed as special category data and therefore deserving of extra safeguards and justification before processing. For pupil testing-data relates to children who are identified under the GDPR as requiring extra safeguards to protect their data.

Will the project require you to contact individuals in ways that they may find intrusive? If yes, please describe how the individuals will be contacted, below.

No.

How will you consult with relevant stakeholders?

Parents/pupils and staff will be informed by the school that Lateral Flow testing will take place and will be provided with a Privacy Notice as well as a medical consent form.

The school will consult with the Governing Body regarding whether the school should participate in the testing programme and can safely roll out and run the testing project.

Step one: Identify the need for a DPIA

What does the project aim to achieve and what will the benefits be to the organisation, to individuals and to other parties?

The aim of the project is to reduce overall infection levels in the community by assisting with the detection of asymptomatic cases.

Originally, the DfE advised that testing could replace the need for self-isolation but guidance has now changed, and schools are advised that pupils and staff should still follow self-isolation guidance following exposure to another person infected with Covid-19. The aim and benefits of the project are therefore clearly subject to change depending on the progression of the pandemic and understanding of strategies to manage this.

It is clear that the project is just one Government-led strategy as part of a wider multi-pronged action to combat the pandemic.

Why was the need for a DPIA identified?

- The data processing involved in this project is part of 'large scale' strategy of Government and can therefore be considered to be a large-scale data collection activity.
- Special category data is collected
- Childrens' data is collected; children are considered to be vulnerable data subjects.
- The results of test for a data subject could have significant consequences (depending on individual- e.g. a pupil may not able to sit an exam or parents/guardians may suffer financial consequences if unable to work). There may be unknown consequences relating to the social isolation of children and potential for further harm for pupils who are on the 'at risk' register or where there are safeguarding concerns.

How many individuals are likely to be affected?

This will vary from school to school but will affect the whole school community in secondary and special schools, and all staff in primary schools.

How will data be collected, used, amended and deleted?

This will vary from school to school but broadly, the school will use their well-established communication methods to contact all staff/pupils that are invited to participate in the tests. They will provide the data subjects with a copy of the relevant privacy notice provided by the DfE and a consent form. The consent form will be returned to the school.

For secondary schools, a testing centre will be set up in line with DfE guidance. Data will be used by the staff working in the testing centre to process the tests. The results of the tests will be entered into the reporting portal. Data will also be retained by the staff and this will be retained in line with the latest DfE guidance on retention. Data will then be securely deleted or destroyed in line with school retention and destruction protocol.

For primary schools, staff will test themselves and enter their identifying data and their test result into the DfE portal or by telephone. They will also report that result to the school who will retain this in line with the latest DfE guidance on retention. Data will then be securely deleted or destroyed in line with school retention and destruction protocol.

What practical steps have been taken to ensure that risks to privacy have been identified and addressed? If sensitive personal data is involved, have you established how this will be handled, accessed, retained and disposed of?

- All data subjects will be provided with a relevant privacy notice.
- Participation in the testing regime is optional and those who refuse to participate will have minimal personal data processed relating to their refusal.
- Staff involved in the testing process have received training guidance/webinars from the DfE, packs relating to the safe running of testing centres
- DCC have provided each school with further information, including Health and Safety risk assessments (which also reference data protection risks), consent form templates (including a Microsoft Forms template) and a training powerpoint/video relating to data protection issues.
- For secondary schools, guidance has been given by the DfE relating to the smooth, orderly running of testing centres, with designated staff being responsible for different steps in the process - each staff has a discrete task to complete. This means that there are less likely to be errors or inadvertent risks to privacy. For example:
 - Strict hygiene and handling processes will be in place to manage paper data security including physical controls of access to room and paper data.
 - Results information will be uploaded by authorised staff only on school devices.
- The school will follow the relevant privacy notice to check that they destroy data in line with DfE requirements.

Is information quality good enough, how will data be verified & recorded accurately?

Identifying Personal Data and contact data is provided directly by the data subject or their parents/carers. Test data quality is not examined in this DPIA.

Have training and instructions been given to appropriate staff to ensure compliance with policy and procedure?

Yes- all staff will be trained appropriately according to their role in the project.

What process is in place to ensure data subjects rights are available in relation to the data held under the new project?

The relevant Privacy Notice sets out the rights available to data subjects in relation to this project.

Identify the privacy risks and mitigations

Describe source of risk (Include associated data protection compliance risks as necessary)	Controls to be implemented	Effect of controls on risk
Data subjects may not be aware of data processing or are unable to access their rights in relation to the data (<i>Lawful, Fairness and Transparency principle</i>)	Privacy notices are provided for data subjects from the school for wider data processing by the school. In addition, a specific Privacy Notice is provided for the testing programme with the Consent Form. Testing is voluntary – staff and pupils/students will not be penalised if they refuse/ or their	Removes risk

	<p>parents/guardians do not give consent for testing.</p> <p>Consent will be obtained from parents/guardians for those under 16 years of age and for those over 16 years who are not “Gillick Competent”.</p> <p>Clarity should be in the form as to how this consent may be conveyed to the school and any time constraints regarding this.</p> <p>If the child has a social worker then they should be consulted to determine who holds parental responsibility for the child.</p>	
Further use of data by school (<i>purpose limitation principle</i>)	<p>The purposes of data uses are set out in the relevant privacy notice. Any further use of data would be unlawful.</p> <p>Data provided for the testing scheme is not to be provided for any other purpose (e.g. updating the school MIS).</p>	Removes risk
Data sets collected (<i>data minimisation principle</i>)	<p>School do not have choice of what data to collect- these data sets are decided by the DHSC and have been set out in the template consent forms.</p> <p>Some data sets are optional as they are for research purposes by the DHSC. Where they are optional, this is indicated on the consent form.</p>	Minimises risk
Data subject identifying personal data is inaccurate (<i>data accuracy principle</i>)	<p>Personal data is provided directly by the data subject or their parent/guardian when completing the consent form (or for primary schools, when uploading the result to the DfE portal). Testers based at the testing centre will check details are up to date for data subjects as part of the registration process for each testing event. Ensure whoever is responsible for inputting of data is appropriately trained and supported e.g. is given adequate breaks, consider mitigations such as another individual is given responsibility for checking data input.</p>	Minimises risk
Test result inaccuracy (<i>data accuracy principle</i>)	<p>It is acknowledged that the test result obtained following the test may not have 100% accuracy. In order to mitigate this, data subjects should ensure that they continue to follow latest government advice to maintain social distancing, hygiene and isolation procedures even if a negative lateral flow test result is recorded.</p> <p>Positive test results should be followed with a PCR test to confirm either positive or negative test.</p>	Minimises risk
Data is retained for an excessive time (<i>storage limitation principle</i>)	<p>The school play a small part in the testing programme and may retain some data relating to tests carried out and the personal data of those tested for a limited period. The relevant privacy notice states how long the school will</p>	Minimises risk

	<p>retain the data and will abide by those requirements. Schools are well-versed in the management of their retention of electronic and paper storage as part of general school operations, and this practice will be extended to this project.</p>	
<p>Inappropriate/unauthorised disclosure/loss/destruction of data (<i>Data Security Principle</i>) <i>Example: individual staff member loses papers containing pupil details or individual staff member discusses details with a friend.</i></p>	<p>In the event any schools propose to use apps/ other platforms to record consent they should check whether those platforms are secure, are only accessible by authorised staff and if any of these transfer data outside UK (if so ensure that adequate protections are in place for these transfers). New staff members/volunteers will given suitable induction to school site and will have watched video on data protection aspects of the project. Employed staff members have duties of confidentiality. Staff will follow procedures as set out in testing procedure plan- Data control measures to be put in place to ensure sensitive data always remains secured appropriately. The test results will be conveyed via text, particular care should be taken in relation to the inputting of the text number and in the case of 16-18 year olds ensuring that they consent to the test to be e mailed to the given text number. Ensure data is backed up, saved at regular intervals, any information shared is suitably encrypted/ sent securely.</p>	<p>Minimises risk</p>

Risk Rating Decision

As a result of the privacy risks and mitigations it has been evaluated that the overall level of residual risk to privacy for this project is not a high risk and therefore we do not need to consult with the ICO.

Integrate the DPIA outcomes back into the project plan

Action To be Taken	Responsibility for	Date of completion
Privacy notices and consent forms sent out to the relevant data subjects with clear instructions for completion and deadline for return of completed forms		
Retain records of refusal of consent in accordance with the agreed retention.		
For secondary schools- Set up testing zone, ensuring staff are adequately trained, including training on ensuring data is secured.		
For primary schools- issue kits to staff together with instructions on how to enter results into the DfE portal and how/who to report results to at school		
Retain data in line with relevant retention period (set out in privacy notice) and ensure that any electronic or paper data is destroyed. Keep a brief note detailing what data is destroyed and the date/method of destruction.		
Keep this DPIA under review and revisit if processing or guidance from the DfE changes.		

Appendix: Linking the DPIA to the Data Protection Principles

Answering these questions during the DPIA process will help you to identify where there is a risk that the project will fail to comply with the GDPR or other relevant legislation, for example the Human Rights Act.

Principle 1

Lawfulness, fairness and transparency of data processing

There must be lawful basis for processing the personal data as follows;

(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.

Have you identified the purpose of the project and which lawful basis applies?	F (as prescribed by the DfE in the template Privacy Notice for schools- N.B DCC has requested a copy of the DfE LIA and is awaiting this)
Is the processing of the data necessary in terms of GDPR?	Yes
How will you tell individuals about the use of their personal data?	P.N. and by urgent message to data subjects/parents/guardians
Do you need to amend your privacy notices?	Yes
If you are relying on consent to process personal data, how will this be collected and what will you do if it is withheld or withdrawn?	Consent forms are provided for the testing process, but this is not consent for data processing itself
If special categories of personal data have been identified have the requirements of GDPR been met?	Yes
As the School is subject to the Human Rights Act, you also will, where privacy risk are especially high, need to consider:	
Will your actions interfere with the right to privacy under Article 8	Yes
Have you identified the social need and aims of the project?	Yes
Are your actions a proportionate response to the social need?	Yes

Principle 2

Personal data shall be obtained only for one or more specified explicit and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

Does your project plan cover all of the purposes for processing personal data?	Yes
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Have you identified potential new purposes as the scope of the project expands?	Yes
Does your Privacy Notice cover all potential uses?	Yes

Principle 3

Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

Is the quality of the information good enough for the purposes it is used?	Yes
Which personal data could you not use, without compromising the needs of the project?	None- but data subjects may refuse to participate or give certain personal data (identified as optional in the consent form)

Principle 4

Personal data shall be accurate and, where necessary, kept up to date.

If you are procuring new software does it allow you to amend data when necessary?	Yes
How are you ensuring that personal data obtained from individuals or other organisations is accurate?	Provided directly by data subject

Principle 5

Personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary.

What retention periods are suitable for the personal data you will be processing?	As per the relevant privacy notice
Are you procuring software that will allow you to delete information in line with your retention periods?	n/a

Principle 6

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

Do any new systems provide protection against the security risks you have identified?	Yes
What training and instructions are necessary to ensure that staff know how to operate a new system securely?	None

Rights of Data Subjects and Privacy by Design

Will the systems you are putting in place allow you to respond to subject access requests?	Yes
Will the system allow compliance with individual rights under GDPR, in particular the right to be informed, the right to rectification and the right to ensure (right to be forgotten).	Yes
If the project involves marketing, have you got a procedure for individuals to opt in to their information being used for that purpose?	n/a

Transferring data outside European Economic Area

Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country of territory ensures and adequate level of protection

for the rights and freedoms of data subjects in relation to the processing of personal data.

Will the project require you to transfer data outside of the EEA?	[School will need to complete this depending on communication system used]
If you will be making transfers, how will you ensure that the data is adequately protected?	