

## The Data Protection Officer (DPO)

### *FAQs for schools preparing for the General Data Protection Regulation*

#### Does my school need to appoint a DPO?

Yes. From May 2018, under GDPR a school must have a data protection officer.<sup>1</sup>

#### What does a DPO do?

In a nutshell, enable and help the school and its staff to comply with the GDPR. The DPO should encourage a ‘data protection culture’ (e.g. data protection by design, the use of data protection impact assessments, ensuring staff understand their data responsibilities, can / do comply with GDPR principles and follow the school’s data protection policy).

The DPO is the first point of contact for all stakeholders with regard to data – highlighting and upholding the principles of data processing, data subjects’ rights, records of processing activities, security of processing, and the notification and communication of data breaches.

#### Can we outsource the role or even share a DPO?

Yes, both of these are possible if the DPO is “easily accessible” by staff, parents and other stakeholders for queries, complaints, data breaches or subject access requests. The DPO must “inform and advise” the school and school staff, so need to understand both how schools work in general (and what data they process) and also have specific knowledge of your school’s workings<sup>2</sup>. As data processing is ongoing, this means that the DPO should be “invited to participate regularly in meetings of senior and middle management<sup>3</sup>”.

#### What about an internal employee?

Yes, but only if the professional duties of the employee are compatible with the duties of a DPO and there is no conflict of interests.

#### So which roles in a school can be the DPO?

Unfortunately, there is no definitive list of who can or cannot be a DPO in a school, because it depends on the duties of a role in each school.

Anyone whose role requires involves data has a conflict of interest and cannot be DPO. In practice that is likely to rule out all roles such as Headteacher, MIS/Network/HR/Finance Manager, Safeguarding Lead or Assessment Lead.

As for other senior positions such as Business Manager, Deputy/Assistant Head or Governor, this may be possible, but only where there is no conflict of interest, so you may need to re-evaluate job roles and responsibilities. A DPO must never be tasked with deciding what personal data to collect, why and how as part of their core role.

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<sup>1</sup> Schools fall into all three categories which require the appointment of a DPO: - they are public authorities; - they regularly monitor individuals online, e.g. for behaviour tracking; - they process ‘special categories of data’

<sup>2</sup> “The DPO should also have a good understanding of the processing operations carried out, as well as the information systems, and data security and data protection needs of the controller. In the case of a public authority or body, the DPO should also have a sound knowledge of the administrative rules and procedures of the organisation.”

<sup>3</sup> As specified by the European Commission Article 29 Working Party DPO clarification document

### Does the DPO need to be an expert / have training?

Yes, but although there is no definition of expert or agreed best-practice for training<sup>4</sup>, it is an important role with new responsibilities, so you will need to commit to upskilling a member of staff if you fill the role internally. We expect more guidance to be issued.

### What else do we need to bear in mind?

The DPO must report directly to the highest management level of the school and regularly attend senior leadership meetings.

The DPO must be truly independent and cannot be fired or disciplined for carrying out their duties.

School management must show clear support to the DPO and provide adequately resources for them to carry out their duties.

### Does the DPO do it all, make sure we comply and carry the can?

No. For example, the data controller<sup>5</sup> retains responsibility for carrying out data impact assessments (with the support of the DPO), and retains legal liability for GDPR compliance. Also, it is important to recognise and explain to staff that although the governors/Headteacher and DPO need to support staff by explaining data responsibilities and by putting systems and processes in place, employees then have individual responsibility to work accordingly and uphold school data-protection policies and the principles of GDPR.

### Where do I go for more information on DPOs and the GDPR?

[gdpr.lgfl.net](http://gdpr.lgfl.net) includes more resources from LGfL and others, including audit templates, guidance documents and more, plus links to the full text of the GDPR and official legal clarification documents, and to the Information Commissioner's Office, the official UK body for data protection, which has guidance and an excellent live chat service for further queries.

*This document and other resources can be found at [gdpr.lgfl.net](http://gdpr.lgfl.net) It has been compiled based on Article 37-39 of the GDPR, clarifications issued by the Article 29 Working Party of the European Commission and guidance from the UK Information Commissioner's Office website and conversations.*

<sup>4</sup> The DPO must have "expert knowledge of data protection law and practices and the ability to fulfil the[ir] tasks"

<sup>5</sup> The data controller of a school is the governing body or academy owner, but day-to-day responsibility is mostly delegated to the Headteacher