PARENTAL CONSENT GUIDANCE

(NOT TO BE SENT TO PARENTS)

1. The General Data Protection Regulation ('GDPR') requires data controllers to identify a lawful basis for processing personal data.

1.1 There are six lawful bases to choose from:

(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 has been included for completeness but it cannot apply if you are a public authority processing data to perform your official tasks so schools will not be able to rely on this for school-related processing activities.)

2. Different lawful bases are likely to apply depending on the processing activity being carried out. Where possible, schools should explore whether a lawful basis other than consent can be relied on. This is because individuals are entitled to withdraw their consent at any time so if the school still needs to be able to process the personal data in a particular way, it is likely that the school should be relying on one of the other lawful bases instead of asking for consent. In addition, asking for consent if it is not the appropriate lawful basis can be misleading and give the parent or pupil a false impression that they have a choice.

3. If none of the other justifications apply to the processing being carried out by the school, then you should consider whether consent is needed. The GDPR specifies that consent means "any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her". It is therefore important that any consent obtained meets this requirement. This guidance note does not provide a detailed analysis of the requirements of consent; for further details please refer to the ICO's guidance which is available via this link:

https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/consent-1-0.pdf

4. There is no need to refresh consent if the consent you currently have meets the standards required by the GDPR and you have records to back it up. If the consent you have on file does not meet these requirements, then you should obtain updated consent.

5. It is likely that schools will need consent from data subjects in order to publish photographs or images such as videos which contain personal data of pupils on their websites, social media, school prospectus, marketing materials and other publications. Aside from any GDPR considerations, there can sometimes be safeguarding reasons why a pupil's photograph should not be published on the internet so asking for consent is a prudent approach to take.

6. The ICO's guidance states that "*…the general rule in the UK is that you should consider whether the individual child has the competence to understand and consent for themselves (the 'Gillick competence test')*." Therefore, the age when a child is able to give their own consent is not prescribed by the GDPR but given that the Data Protection Bill states that children from the age of 13 can give their consent to online services, this seems like a sensible starting point for schools to use when deciding when to approach pupils for consent.

7. In the case of pupils who do have the competence to give consent, which may be from the age of 13, it is likely that they will be able to make their own decisions as to whether they wish to give consent and secondary schools should approach such pupils directly for their consent, unless there are specific circumstances which leads a school to conclude that a pupil is unable to give "informed" consent. The ICO's guidance states, "*Parental consent won't automatically expire when the child reaches the age at which they can consent for themselves, but you need to bear in mind that you may need to refresh consent more regularly*". It may be helpful to keep parents informed so that they don't feel excluded from the process but the consent should come from the pupil once they have the competence to understand what it means. If there is a

disagreement between the parent and a pupil about whether the photo or image should be used, the safest approach for the school is to not use the photo and to let the family resolve the issue without the school's involvement.

8. In the case of children who do not have the competence to give their own consent, for example, children up to the age of 13, the personal data in the photograph or image belongs to the pupil but their parents can give consent on their behalf.

9. Schools should only use the photograph or image in accordance with the consent that has been provided. Therefore, if a school wishes to use a photo or image in a different way which wasn't mentioned in the original letter asking for consent then fresh consent for the new purpose will need to be obtained, for example, if the school wishes to use a new app or social media platform to publish photographs or images.

10. The ICO recommends taking a 'granular' approach to consent which means that parents should be given choices about what they would like to opt into instead of an 'all or nothing' approach to asking for consent. If consent is given then the school must keep clear records of who consented, how, when and what they consented to. Schools will need to consider how this can be managed in practice, especially as there are likely to be mixed responses from parents. Schools may need to introduce protocols which require staff to carry out checks or obtain authority from authorised members of staff before publishing photographs or images of pupils in school publications.

11. If consent is obtained, schools will need to consider how often to refresh it.

11.1 The ICO's guidance states, "*You should also consider whether to automatically refresh consent at appropriate intervals. How often it's appropriate to do so will depend on the particular context, including people's expectations, whether you are in regular contact, and how disruptive repeated consent requests would be to the individual. If in doubt, we recommend you consider refreshing consent every two years – but you may be able to justify a longer period, or need to refresh more regularly to ensure good levels of trust and engagement*."

11.2 Although this guidance refers to consent, it is likely that schools will use photographs and images of pupils in some circumstances where, arguably, consent is not needed. For example, it appears to be established practice that a photo of pupils is kept on a school's management information system so that staff can ensure that a record relates to the correct pupil or as a way of helping catering staff to identify pupils with allergies. In addition, staff may take photographs or videos of pupils as part and parcel of providing an education, for example, to celebrate achievements, document school trips, record school activities, identify team captains or prefects and for other educational purposes.

11.3 In such circumstances, a school might decide, for example, that the appropriate lawful basis for using photographs is that it is part of the school's public task (i.e. providing education) or that it's in the pupil's vital interests though a school should still ensure that it is being transparent with parents / pupils about how photos are being used by communicating this information in the privacy notice. In such circumstances, consent would not be needed if such photographs are used in and around the school although we would strongly advise that consent is still obtained before any photographs or images are published on the internet or social media.

11.4 In addition, schools should still take a common sense approach to using photographs as it may sometimes still be appropriate to liaise with parents or pupils before displaying photos in certain circumstances, for example, purely as a matter of courtesy / consideration, to avoid anyone being taken by surprise or if the context is such that a parent might complain about the school's use of a photo.

12. The template letter below is not intended to cover every single use of photographs in schools and only addresses the use of photos on the website, social media or other school publications.

Please ensure that all comments, square brackets and highlights are removed from the final letter before it is sent to parents / pupils.

PARENTAL CONSENT GUIDANCE

PLEASE COPY AND PASTE ON TO SCHOOL HEADED PAPER

Dear Parent/Carer,

RE: CONSENT TO USE PHOTOGRAPHS AND IMAGES ONLINE AND IN SCHOOL PUBLICATIONS

I am writing to seek your consent for The Minster Schools, which is part of the Southwark Diocesan Board of Education Multi-Academy Trust (SDBE MAT) to use your son/daughter's photograph for certain purposes connected with the school.

We are proud of the many achievements of our pupils of here at The Minster School and there are many activities and events for our pupils to get involved in. You'll have seen that we often use photos of pupils on our website and in our school blog to give people a flavour of school life at The Minster School, to keep the school community informed about what our pupils do and to celebrate pupils' achievements. In this digital age, many members of our school community use social media to stay connected with what's happening in school and, for those who don't use social media, the website is an important communication tool which showcases what we do.

You may be aware that the law relating to data protection is changing so we are taking this opportunity to review the consent that we have on file to use photographs and videos of pupils for these reasons. Under data protection law, we need the consent of parents/carers to use photographs or video images of pupils in this way, usually until pupils reach the age of 13.

There is no obligation on you to give consent and if you choose not to give consent for some or all of the options below, we will ensure that your child's photo or a video is not used for those purposes if your child can be identified from it. It may be helpful to inform your child if you decide not to give consent for any of the options below. In some cases, we may take group photos of pupils and we may publish a photograph if we are satisfied that individual pupils cannot be identified from the image.

Please note that there are likely to be circumstances when we may use your child's photograph for other purposes connected with the school where we do not require your consent because there is another legal reason which permits us to use photos or images of your child. For example, we keep a copy of the official school photo on our database so that we can correctly identify pupils.

For further information, please see our privacy notice which is included with this letter for your information. A copy can also be requested from the school reception (in alternative languages if required), downloaded from the school website or downloaded from the Trust's website: https://gdpr.sdbemat.org.

We will write to you at the start of every key stage to refresh your consent, but we will write to you sooner than that if we wish to use your child's photo or image in a way that is not anticipated below, for example, if the school wishes to use a different social media site or online platform.

You can withdraw your consent at any time by contacting the School's Data Protection Lead:

Ali Silke

office@minsterschools.co.uk

If you withdraw consent for your child's photo being used in any of the ways set out below, we will stop using in this way but we may still need to retain a copy of the photograph or image for other reasons, for example, where it is needed to perform our public task of providing education.

To enable us to update our records, please fill in the form below and return it to the school office marked for the attention of the 'Academy GDPR Lead'.

If you have any questions, please do not hesitate to contact us.

Yours sincerely,

Ali Silke

Headteacher

PARENTAL CONSENT GUIDANCE

CONSENT FORM

PUPIL NAME:	
PUPIL CLASS:	

Please read the following options thoroughly and confirm if you wish to provide your consent as appropriate by ticking either 'Yes' or 'No' for each criteria.
We can only use photos and images for the reasons set out in this form if we have received this form back from you. Please therefore return this form return it to the school office marked for the attention of the 'Academy GDPR Lead' by [enter date] so that we can update our records about whether you give your consent.
There is no obligation on you to give consent if you prefer not to do so. The school will only publish images and videos of your child for the options that you provide consent for.

I provide consent to:	Yes	No
Using photos of my child on the school website.		
Using photos of my child on the school website, including their name.		
Using videos of my child on the school website.		
Using videos of my child on the school website, including their name.		
Using photos of my child, including their name, in the school newsletter/school magazine, which may be emailed to parents and made available on the school's website.		
Using photos of my child on social media on the following platforms: Instagram / School website		
Using photos of my child on social media, including their name, on the following platforms: Instagram / School website		
Using videos of my child on social media on the following platforms: Instagram / School website		
Using videos of my child on social media, including their name, on the following platforms: Instagram / School Website		
The local media using photos of my child, including their name, to publicise school events and activities (only the following organisations):		
• LIST LOCAL NEWSPAPERS		
Using photos of my child in marketing material, e.g. the school brochure and prospectus which may be in hard copy format and/or available online.		
Using photos of my child in marketing material produced by our Academy Trust, which may include brochures, prospectus in hard copy format and/or available online.		

I _____(name) am the parent/carer of _____(name) in class _____ and I confirm that I have read and understood the contents of this consent form and I have selected from the above options whether I do or do not give consent for my child's photograph or image to be used in the various ways set out above.

Name of Parent:	
Signature:	
Date:	