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Protecting and improving the nation's health

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To whom it may concern

## **Advice on the General Data Protection Regulation and childcare sites health data collections**

This letter provides advice on the lawful basis under the General Data Protection Regulation (GDPR) for children's personal information to be used for dental surveys.

The key message is that no change is needed to the current ways in which children's personal information is used and shared for childcare sites health data collections to be lawful under the GDPR.

### **GDPR and the lawful basis for the childcare sites health data collections**

The GDPR became UK law on 25 May 2018. It updates and strengthens the ways in which personal data is protected<sup>1</sup>. The GDPR is an evolution in data protection legislation rather than a revolution.

All processing of personal data – meaning all aspects of the collection, use and sharing of personal data about identifiable individuals<sup>2</sup> – must have a lawful basis under the GDPR. Article 6 of the GDPR sets out the range of purposes for which personal data can be lawfully processed. Article 9 sets out the associated conditions for the lawful processing of 'special categories' of personal data, including data about health.

Consent is one of the lawful bases for processing personal data under the GDPR but is not the lawful basis for childcare site health data collections. Instead, this is provided by varying combinations of the GDPR articles that cover:

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<sup>1</sup> For further information on the GDPR can be found on the Information Commissioner's Office website: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr>

<sup>2</sup> <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/>

- compliance with a legal obligation
- the exercise of official authority
- medical diagnosis or the provision of healthcare or treatment
- public interest in public health

No change is needed to the current ways in which parents are informed of childcare site health data collections for these to be lawful under the GDPR. A more detailed explanation is provided below.

## **GDPR and dental health surveys**

All local authorities in England are required to undertake dental surveys as part of a programme of work to help improve the dental health of people in their area.

The official authority for dental health surveys is provided by The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012<sup>3</sup>. This official authority means that the lawful basis for processing children's personal data for this purpose is considered to be provided by:

- GDPR Article 6(1)(c) – processing is necessary for compliance with a legal obligation
- GDPR Article 6(1)(e) – processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority
- GDPR Article 9(2)(h) – processing is necessary for medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems

## **Informing parents**

Guidance on the management of dental surveys among 3-year-old children in childcare sites is published by Public Health England<sup>4</sup>.

Dental surveys involve a physical examination so the guidance states that the written agreement of parents or persons with parental responsibility must be obtained for their children to be included in a survey.

No change is required to the way in which this written agreement is obtained. Childcare sites should continue to use the template information letter and agreement form

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<sup>3</sup> [www.legislation.gov.uk/uksi/2012/3094/contents/made](http://www.legislation.gov.uk/uksi/2012/3094/contents/made)

<sup>4</sup> The national protocol for the 2019/20 survey of 3-year-old children can be found at: [www.gov.uk/government/collections/oral-health](http://www.gov.uk/government/collections/oral-health)

provided by Public Health England. Only children for whom parental agreement has been received should be included in a survey.

## **Summary**

No change is needed to the current ways in which children's personal information is used and shared for childcare sites health data collection to be lawful under the GDPR.

The lawful basis under the GDPR for dental surveys of children in healthcare sites is not provided by consent – it is provided by varying combinations of 'compliance with a legal obligation', 'exercise of official authority', 'medical diagnosis or the provision of health care or treatment' and 'public interest in the area of public health'.

However, parents or persons with parental responsibility must still provide their written agreement for children to be included in a dental survey in a childcare site.

Yours faithfully

A handwritten signature in cursive script that reads "Andrew Furber".

Dr Andrew Furber  
Lead Centre Director for Dental Public Health