



EDUCATIONAL TRUST

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Educational Psychology Service – Privacy notice: Parents/ carers of young adults aged 16+ (DETAILED GUIDANCE)

Who is the privacy notice for?

Parents/ carers of young adults, and Social Workers with parental responsibility for Looked After Children (LAC), aged 16+ who are beyond compulsory school age (i.e., young adults who were aged 16 and above at the beginning of the current academic year) and have demonstrated that they do not have the mental capacity to consent to the involvement of the Educational Psychology Service (EPS) by:

- Having an impairment of, or disturbance in, the functioning of the mind or brain, whether permanent or temporary
- Being unable to understand and retain information related to the EPS, and use this information as part of their decision-making process
- Being unable to communicate their decision to consent to the involvement of the EPS (whether by talking, sign language or other means)

For more information, see the Mental Capacity Act (2005).

Privacy notice and data protection law

This privacy notice has been written in accordance with the General Data Protection Regulation (GDPR) and the Data Protection Act (2018), and with reference to guidance published by the Information Commissioner's Office (ICO) and the Department for Education. For more information, see the Bright Futures Educational Trust (BFET) Data Privacy Policy at <http://bfet.co.uk/bfet-policies/>.

Personal data

Personal data is 'data from which a person can be identified or is identifiable along with other data that is being processed' (e.g., name; address; contact number; assigned numbering and codes; IT log-in data; social and economic information/ opinions). In order for the BFET Educational Psychology Service (EPS) to effectively support your child, we need to process personal data relating to them and their family, including the following special categories of personal data:

- Race/ ethnic origin
- Religion
- Physical/ mental health

If it is relevant and necessary, we may also need to process information about criminal convictions, offences, allegations of criminal convictions and/ or offences, details of criminal proceedings and any determinations made at their conclusion related to your child and their family. We will ensure the processing of such data is in accordance with the data protection principles set out in the GDPR and will follow BFET's retention policy for this type of information, retaining it as and when necessary for periods in which we are required to do so. When the need to retain the information has ended, steps will be taken to erase the information.

We will process personal data by liaising/ meeting with yourselves, your child, school staff and any other services involved with your child/ their family, and by carrying out assessment work with your child.

The lawful basis by which we process personal data is 'for compliance with a legal obligation' (i.e., legal obligation) and 'for the performance of a task carried out in the public interest' (i.e., public task), as detailed within the Special Educational Needs Code of Practice (SENDCoP; 2015) and Part 3 of the Children and Families Act (2014). We may also rely on your/ your child's consent to process personal data in certain circumstances which will be explained at the time that consent is sought.

The primary condition that we rely upon to process special categories of personal data and criminal data (where relevant) is 'for reasons of substantial public interest' (i.e., substantial public interest).

The Data Protection Act 2018 provides further conditions when relying upon substantial public interest as the lawful basis for processing. The relevant conditions for our service are as follows:

- Statutory purpose - when a law or statutory guidance places an obligation on us to process information
- Preventing or detecting unlawful acts - in the event the information we collect relates to an alleged criminal offence or from intervening when information indicates that a child is at risk of harm
- Safeguarding of children and of individuals at risk when consent cannot be given by the child or individual

On some occasions, we may need to process special categories of personal data and criminal data (where relevant) with the individual's explicit consent or that of a parent/carer or Social Worker (as appropriate). On such occasions, we will ensure that the individual is informed of the reasons why we need to process this data, how it will be used and who it may be shared with before we seek consent.

Data security

Personal data in paper form (e.g., file notes; assessment records) will be stored in locked cabinets/ cupboards/ drawers within our locked office that has restricted access. Personal data in electronic form (e.g., scans of paper documents; word processed documents) will be stored on our central computer system or encrypted and password protected storage devices. Personal data is only carried off-site when needed (e.g., when transporting documentation from a BFET school to our office; when attending a meeting about your child) and steps are taken to ensure that the data is kept safe and secure. Access is limited to authorised members of staff.

Data retention

As the SENDCoP (2015) covers the newborn to 25 age range, we will retain your child's personal data until they are 26-years-old, at which point all documentation will be permanently deleted unless it is required to comply with any legal obligation applied to BFET, live investigation or Court/ Tribunal proceedings.

Sharing personal data with third parties

We routinely share personal data with third party controllers (i.e., organisations subject to the same obligations under data protection law as BFET), including Local Authorities (e.g., Statutory Assessment Teams; Social Services), the NHS (e.g., CAMHS/ Healthy Young Minds), alternative provisions (e.g., PRUs) and other schools (e.g., after your child leaves a BFET school). We will not share personal data relating to your child and their family without your consent unless the law/ our policies allow us to do so (e.g., when meeting with multiple agencies as a team around your child).

Individuals' rights

Data protection law provides individuals with various rights over their data, subject to some exemptions. Individuals have the following rights:

- To access their personal data being processed by BFET
- To object to the processing of personal data that is likely to cause, or is causing, damage or distress
- To object to decisions being taken by automated means
- To, in certain circumstances, have inaccurate personal data rectified, blocked, erased or destroyed
- To seek redress, either through the ICO or the Courts

If your child does not have the mental capacity to exercise the above rights, parents/ carers and Social Workers with parental responsibility for LAC can exercise their child's right to request access to information that BFET holds about them by writing to BFET's Data Protection Officer on their child's behalf (see Data Privacy Policy). Individuals seeking to exercise any of the above rights over their data should also contact BFET's Data Protection Officer in the same way.

Please note that in certain circumstances, requested information may have to be withheld when there is a risk that it may cause serious harm to the physical and/ or mental state of the individual to whom the information relates or another individual.

Queries or concerns about personal data

If you have a query, concern or complaint about the way we are collecting or using your personal data, you should raise your concern with BFET in the first instance. If you are not satisfied with BFET's response to your query/ concern/ complaint, you may contact the ICO directly. For more information, please visit the ICO website at <https://ico.org.uk/>.

Adulthood within post-16 education

Within the SENDCoP (2015) and Part 3 of the Children and Families Act (2014), it states that young adults aged 16+ who are beyond compulsory school age (i.e., young adults who were aged 16 and above at the beginning of the current academic year) have the right to make requests and decisions under the Children and Families Act (2014) as opposed to their parent(s)/ carer(s)/ Social Worker with parental responsibility (e.g., if you are a LAC), providing that they have the mental capacity to do so.

Therefore, as the work of an Educational Psychologist is underpinned by the Children and Families Act (2014), but given that your child has demonstrated that they do not have the mental capacity to consent to the involvement of the EPS, we require your consent in order for the EPS to become involved with your child. However, where young adults do not have the mental capacity to consent to the involvement of the EPS, we defer from seeking your child's consent to seeking their assent (i.e., the agreement of someone not able to give legal consent).

If your child assents to become involved with the EPS, we will work with them directly. If your child does not assent to become involved with the EPS, we will work with them indirectly (i.e., by liaising/ meeting with yourselves, school staff and any other services involved with your child/ their family, and by carrying out indirect assessment work with your child).



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We have created the table below to illustrate the various permutations surrounding mental capacity and consent/ assent:

<i>Young adult's level of mental capacity</i>	<i>Has assent been provided by the young adult?</i>	<i>Has consent been provided by the parents/ carers/ Social Worker with parental responsibility for LAC?</i>	<i>Will the EPS become involved, either directly or indirectly?</i>
Does not have the mental capacity to consent to the involvement of the EPS	Yes	Yes	Yes (directly)
	Yes	No	No
	No	Yes	Yes (indirectly)
	No	No	No

Of course, the above is for illustration purposes only and we hope that you will consent, and that your child will assent, to become involved with the EPS as joint and collaborative working is always most effective.