**Photo’s of children**

ICO advice is that there are likely to be 2 main legal bases (required by GDPR) for taking photos of children – these are ‘legitimate interest’ and ‘consent’

If my legal basis is legitimate interest...

If I want to use the legal basis of ‘legitimate interest’ for taking photos of children which are used to, for example, support children’s learning ICO state that I must first use the following 3 part test

1 – Identify a legitimate interest

For example, I might say that the photos are taken to promote learning; children look at the photos and talk about them; photos are shared with parents.

2 – Show that the processing is necessary to achieve it

For example, I might say that children’s learning and development files would not demonstrate the child’s progress effectively without photos of them at different ages and stages and doing different things.

3 – Balance it against the individual’s interests, rights and freedoms.

For example, parents might reasonably expect me to process photos of their child for the purposes of recording their learning and development and the processing does not cause the child harm.

ICO state that I will need to keep a record of my Legitimate Interests Assessment to help me justify my decision and demonstrate compliance with GDPR.

If parents say that I do not have a legitimate interest to take photos of their child, I will need to consider whether I can justify my decision... I will stop taking the photos and take further advice from ICO – or find another way of showing progress and sharing with parents without taking photos.

 **The rights of the child?**

GDPR strengthens the rights of the child. Parents must have parental responsibility to act on their child’s behalf and I will make ‘reasonable efforts’ (GDPR quote) to check they have parental responsibility. If a child objects to having their photo taken it’s important I respect their right to choose. Once they understand about, for example, social media it will be important that parents have a conversation with them and check they are happy for me to put their photos or other information about them online as well.

 **If a parent withdraws their consent?**

If parents withdraw consent I will make every effort to delete all photos held about the child because I will unlikely to have a legal basis for holding onto photos of children.

If a child is featured on a group photo and their parent withdraws consent I will take measures to delete it – I will also need to ask other parents to delete the photo if they have retained it for their own child...

If ICO are called to investigate, they will make a decision based on my legal basis for processing the photo and my other documentation including how I have explained what I do with the children’s data in your Retention Policy.

**Can I share photos with other agencies and professionals?**

I can share photos with consent from parents and a Data sharing Agreement will be drawn up in advance but if consent is withdrawn from the parent I will inform the agencies and professionals concerned instructing them that consent has been withdrawn.

**What happens when children leave the setting?**

I will remove all photos held for business purposes from my files – unless there is a legal basis to keep them and have consent from parents in writing to keep them. Which can be with drawn at any time.

This type of processing will be detailed in my Retention Policy which is shared with parents when they start in my care.

**What photos are taken of children?**

There are different types of photos early years providers might want to take, for example –

1. To record children’s learning and development during their time in the setting  (Legitimate)
2. To give children a sense of belonging by displaying photos  (Consent)
3. To share learning and development information with parents (Legitimate)
4. To advertise the setting on a website or Facebook page  (Consent)
5. Because it’s a nice photo to take of, for example, a group of children. (Consent)

**Why am I taking photos of children?**

1. Photos will be taken to record children’s learning will be printed and placed in the child’s learning file which goes home with the child when they leave or go to school...
2. Photos taken to display might be placed on the noticeboard or on a birthday display.
3. Photos might be shared with parents through Tapestry, on a secure Facebook page or by email.
4. Photos of children which are used to advertise your setting might be put on a website.
5. A nice photo or a group shot can be shown to parents and / or shared on a secure Facebook group.

Photo’s are stored on my Camera and on my laptop which is connected to a back up storage machine. Also they are uploaded to the online Tapestry site. (See Tapestry policy)