

DATA PROTECTION ACT 2018 AND UK GENERAL DATA PROTECTION REGULATION

REPRIMAND

TO: Chelmer Valley High School

OF: Court Road, Broomfield, Chelmsford, Essex, SM1 7ER

1.1 The Information Commissioner (the Commissioner) issues a reprimand to Chelmer Valley High School in accordance with Article 58(2)(b) of the UK General Data Protection Regulation (UK GDPR) in respect of certain infringements of the UK GDPR.

The reprimand

1.2 The Commissioner has decided to issue a reprimand to Chelmer Valley High School in respect of the following infringements of the UK GDPR:

- Article 35(1) of the UK GDPR which states a controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data, where this processing is likely to result in a high risk to the rights and freedoms of natural persons.

1.3 The reasons for the Commissioner's findings are set out below.

1.4 The controller, Chelmer Valley High School, are an academy school located in Essex providing education for around 1,200 students ages 11 to 18. This reprimand concerns the processing of biometric personal data for the purposes of managing their cashless catering system.

1.5 Chelmer Valley High School introduced facial recognition technology in March 2023. Prior to this, their cashless catering was managed through fingerprint recognition technology, which had been in place since 2016. The facial recognition technology was provided to Chelmer Valley High School by CRB Cunninghams, which acts as a processor on behalf of Chelmer Valley High School.

1.6 On 29 January 2024 Chelmer Valley High School's Data Protection Officer (DPO) 'IGS' contacted the Commissioner and provided a DPIA that had been completed in November 2023. IGS considered the processing to

be high risk, and submitted the DPIA for review. IGS confirmed that no DPIA had been completed for the introduction of facial recognition technology prior to the processing commencing in March 2023.

1.7 Through further correspondence with IGS it was established that from March to November 2023 the controller had been relying on assumed consent for facial recognition, except where parents or carers had opted children out of the processing. Article 4(11) of the UK GDPR is clear that consent requires an affirmative action, and as such consent on an opt-out basis would not have been valid or lawful. Further to this, the majority of students would have been considered sufficiently competent to provide their own consent. The parental opt-out deprived students of the ability to exercise their rights and freedoms in relation to the processing between March and November 2023.

1.8 The controller also failed to seek advice from their DPO in relation to the introduction of the facial recognition technology, nor did they consult with parents or students before commencing with the processing. The Commissioner believes that had Chelmer Valley High School sought advice from their DPO, many of the compliance issues would have been identified prior to the processing commencing.

1.9 Under Article 35(4), the Commissioner has published a list of processing activities that require a DPIA to be completed prior to the processing. The Commissioner's published list states that the processing of biometric data requires a DPIA where this is combined with any of the criteria from the European guidelines¹. These guidelines include the processing of data concerning vulnerable data subjects (such as children), and the use of new technological solutions.

2.0 Chelmer Valley High School has therefore failed to complete a DPIA where they were legally required to do so. This failing meant that no prior assessment was made of the risks to data subjects, no consideration was given to lawfully managing consent, and students at the school were then left unable to properly exercise their rights and freedoms.

2.1 Chelmer Valley High School were invited to provide representations. Chelmer Valley High School failed to provide any representations.

¹ [JUSTICE AND CONSUMERS ARTICLE 29 - Guidelines on Data Protection Impact Assessment \(DPIA\) \(wp248rev.01\) \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016WD0291&from=doctrines)

Remedial steps taken by Chelmer Valley High School

2.2 The Commissioner has considered and welcomes some of the remedial steps taken by Chelmer Valley High School. In particular, the completion of a DPIA in November 2023 and refreshing of consents by obtaining explicit opt-in consent from students.

Decision to issue a reprimand

2.3 Taking into account all the circumstances of this case, including the remedial steps, the Commissioner has decided to issue a reprimand to Chelmer Valley High School in relation to the infringements of Article 35(1) of the UK GDPR set out above.

2.4 While several areas of non-compliance are apparent, the Commissioner has decided to focus on the controller's actions prior to the processing. The completion of a comprehensive DPIA before the processing commenced would have provided Chelmer Valley High School with the opportunity to assess the risks of the processing, and avoid the subsequent compliance failures.

Further Action Recommended

2.5 The Commissioner has set out below certain recommendations which may assist Chelmer Valley High School in rectifying the infringements outlined in this reprimand and ensuring Chelmer Valley High School's future compliance with the UK GDPR. Please note that these recommendations do not form part of the reprimand and are not legally binding directions. As such, any decision by Chelmer Valley High School to follow these recommendations is voluntary for Chelmer Valley High School. For the avoidance of doubt, Chelmer Valley High School is of course required to comply with its obligations under the law.

2.6 If in the future the ICO has grounds to suspect that Chelmer Valley High School is not complying with data protection law, any failure by Chelmer Valley High School to rectify the infringements set out in this reprimand (which could be done by following the Commissioner's recommendations or taking alternative appropriate steps) may be taken into account as an aggravating factor in deciding whether to take enforcement action - see page 11 of the Regulatory Action Policy [Regulatory Action Policy \(ico.org.uk\)](https://ico.org.uk) and Article 83(2)(i) of the UK GDPR.

2.7 The Commissioner recommends that Chelmer Valley High School should consider taking certain steps to improve its compliance with UK GDPR. With particular reference to Article 35 of the UK GDPR, the following steps are recommended:

1. Prior to new processing operations, or upon changes to the nature, scope, context or purposes of processing for activities that pose a high risk to the rights and freedoms of data subjects, complete a DPIA and integrate outcomes back into the project plans. [Types of processing](#) that require a DPIA to be completed can be found in our website guidance.
2. Amend the DPIA to give thorough consideration to the necessity and proportionality of cashless catering, and to mitigating specific, additional risks such as bias and discrimination.
3. Review and follow all ICO guidance for schools considering whether to use facial recognition for cashless catering. A [case study on North Ayrshire Council schools](#) and their use of facial recognition technology can be found on our website.
4. Amend privacy information given to students so that it provides for their information rights under the UK GDPR in an appropriate way.
5. Engage more closely and in a timely fashion with their DPO when considering new projects or operations processing personal data, and document their advice and any changes to the processing that are made as a result.