

**Local Authorities in London Sharing Data with ESF Youth Programme Providers**

London Councils

59½ Southwark Street

London SE1 0AL

# Introduction

1. This short report is written for local authority officers in London who have responsibility for assisting young people who are not in education, employment or training (NEET) into appropriate education, training or employment (ETE) opportunities, especially those young people are covered by the requirement to participate in education or training up to the age of 18.
2. The Education and Skills Act 2008 requires all young people to continue in education or training until at least their 18th birthday (although in practice the vast majority will continue until the end of the academic year in which they turn 18). Local authorities have broad duties to encourage, enable and assist young people to participate in education and training and the Department for Education (DfE) has produced [Statutory Guidance](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/561546/Participation-of-young-people-in-education-employment-or-training.pdf) for local authorities to support them in these duties.
3. The Education and Skills Funding Agency (ESFA), acting on behalf of the London Economic Action Partnership (LEAP [the local enterprise partnership for London]), has commissioned the London European Social Fund (ESF) Youth Programme - a single programme comprising many specialised strands and delivered largely sub-regionally – to address the level of NEET in London. The Programme depends on cooperation between its providers and other agencies, such as the Department for Work and Pensions / Jobcentre Plus (DWP) and local authorities. In particular local authorities, because they have a duty to track young people who are NEET, work closely with providers to help young people move to appropriate ETE destinations.
4. Both providers and local authorities report varying degrees of effective collaboration and this paper aims to provide case studies of local authorities who have shared data about NEET young people with providers. This will enable other authorities to adapt the way in which they work with London ESF Youth Programme providers in their area.

# Background

1. Details about the London ESF Youth Programme and its organisation can be found on the [LEAP website](https://lep.london/sites/default/files/Youth%20Programme%20Linkages%20of%20Strands%20-%20FINAL_0.pdf). It is anticipated that recruitment will largely take place through the Outreach providers, who will refer young people onto the most appropriate provision to meet their needs and support them into sustained ETE outcomes.
2. The following case studies, which demonstrate how providers have shared data about NEET young people most effectively with providers, are intended to help local authorities work more closely with ESF providers in their area and ensure that the Programme operates evenly across London in the interests of young people.
3. Some of the local authorities highlighted have requested that their contact details are not shared, but London Councils may be able to broker contact where required. Please see page 5 of this report for details.
4. Local authorities play varying roles within the London ESF Youth Programme. They have the potential to bid as prime contract holder in their sub-region to lead consortia delivering specific services to young people. They may also be delivery partners within a consortia led by another organisation. In either of these cases, the local authority can tap into a rich source of data about young people, the local education and training system and the labour market. Other local authorities do not seek to play a role in the delivery of services funded through ESF, though they nonetheless wish to ensure that young people in their area benefit from these services. Within each authority, the organisation (and staffing) of youth services differs accordingly – direct delivery of youth services by staff employed by the council or delivery through private or voluntary partners including mutuals.

# Case study one

1. One borough has used the privacy notices that all schools are obliged to publish as the mechanism through which it can share information directly with delivery partners. The data owners are schools and the borough council is acting as their agents. This allows it to share this information
* Each year the DfE publishes a template privacy notice for schools to use. Standard content includes: Once our pupils reach the age of 13, the law requires us to pass on certain information to [insert name of local authority or the provider of Youth Support Services in your area] who have responsibilities in relation to the education or training of 13-19 year olds. We may also share certain personal data relating to children aged 16 and over with post-16 education and training providers in order to secure appropriate services for them.
* While at school, pupils/parents have the opportunity to opt out of having their information shared and this is usually recorded at local authority level where the school is part of the School Information Management System (SIMS). However, not all schools are part of SIMS. It is also possible that young people opted in while attending a school in our borough and then opted out while attending a subsequent school in another borough. It would therefore be too difficult and very labour intensive to assess the ‘opt out’ status of each young person.
* The borough wrote to every young person on its NEET list and those on its list of those whose participation status is “not known” – those whose circumstances put them at risk of NEET based on the borough’s Risk Of NEET Indicators (RONIs). The letter gave young people the opportunity to opt out and to access information on its website about who we would be sharing their information with. (letter attached at Appendix 1)
* A generic email drop box for young people to drop out was created and is monitored daily.
* Each email received is responded to. If a young person opts out after their information has been shared with a provider, written confirmation from that provider that the young person’s details will be deleted and that they will take no further action is shared with that young person.
* The council filtered its lists based on highest risk indicators, i.e. young people who identified as Black and Minority Ethnic and who were also care leavers were referred to the care leaver strand of the London ESF Youth Programme.
* Providers had to give the council a named individual who was given access to the Learning Grid for London, the council’s secure platform of preference
* Each provider was given a unique list which was sent via a secure platform on a standardised template. (attached as Appendix 2. Note:. Column headings highlighted in orange are completed by ESF provider) They are not advised how the young person meets their criteria but are assured that the information we have suggests they do.
1. The guidance received from the council’s information governance officer was as follows:

*The Data Protection Act (DPA) requirement is to process information in a way that is fair to the data subjects (first Data Protection Principle). In many cases that will mean providing a Privacy Notice that tells them what you are going to do with their personal data, and that will be fine. Telling them in other ways such as a letter can also demonstrate fairness. How far you need to go will really depend on how unfair it would be not to have a particular purpose of processing specifically covered in a Privacy Notice.*

*The other part of the First Principle is having a valid justification for carry out the processing. Consent is the strongest one, but you don't need to have consent if there is another provision in schedule 2 of the DPA which allows the processing. For example, the sixth one is that the processing is necessary for your legitimate interests (and those of whoever you disclose it to) provided that it doesn't prejudice the data subjects' rights and freedoms in an unwarranted way. There is a requirement for a condition in schedule 3 to be met as well, but only if any of the personal data is sensitive (which contact details are not).*

*A risk assessment approach will help you decide whether you are prejudicing anyone's rights and freedoms. If the circumstances are such that no-one is likely to object, then that is good. And if they did object and you could halt the processing of their data, that is good too. If someone strongly objected and contacted the ICO, they would look at those same issues and consider whether what the council had done was reasonable in the circumstances – and it sounds to me from what you said as though it will be.*

*Incidentally, the council (and everyone else) will have to move away from general privacy notices to more targeted ones, delivered at appropriate times. This is a requirement for complying with the new General Data Protection Regulation that will be in force in a year or two. We don't yet know how that will work in practice, but it may mean pop-up windows or links on web forms and pages, or emails when particular processing takes place.*

# Case study two

1. Another council intends to share data with ESF providers and is in the process of putting into place specific requirements that have been recommended by its council’s legal team.
2. The council’s business case for sharing data that it put to its Data Protection Officer also referred to the Privacy Notices that schools and colleges use.
3. The specific requirements include
* Wherever possible the council must attempt to obtain the young person’s consent to share their personal information with an appropriate provider who can supply support. This will always be the council’s preferred option and in all cases it will have made several attempts to obtain this;
* The council will write to the young person (at last known address/contact details) giving them the option to refuse to consent to sharing their personal information and also providing them with a directory of providers to whom the council intends to pass their details. The council intends to write to all its NEET and “not known” young people and will do so again when it has published its list of eligible providers (see bullet point 4).
* The council must have a specific data sharing agreement for this purpose (attached as Appendix 3) with those providers who we may share the information with. These providers must have returned a signed agreement, be quality assured (e.g. confirm they are government funded, such as by ESF, ESFA or DWP, and therefore subject to robust quality assurance and financial diligence) and the provision must be available free to the young people. The council has written to all these providers and the data sharing agreements are being received. The council will only share the personal information of those young people with whom it has a statutory responsibility to support.
* The council is required to publish the list of these providers on its website and direct young people to this list when it informs them that the council may share their information. It intends to publish this on the Council Website.
* The council will only share the information with one appropriate provider, for a specific purpose and period of time. This means it will ‘triage’ cases for appropriate referral. It is also limited to what information it can share.

1. At a later stage in the implementation of its plan to share data, the council will review the format, frequency and detail of the information it shares with providers.

# Case study three:

1. One council in London, building on an approach developed when the Youth Contract operated, shared with ESF providers in November 2016 the names and postal / email addresses of young people who were not in education, employment or training at that time through a spreadsheet that is password protected (providers are given the password separately). Every young person listed on the spreadsheet was sent a letter offering them the option to opt out of the data sharing exercise (see Appendix 4) and very few took up this option.

# Further information

1. For further information about this report, pleased contact Peter O’Brien (peter.obrien@londoncouncils.gov.uk 020 7934 9743).

**Appendix 1: Sample contact letter to young people**

Addressee

Date

Dear

We are pleased to advise that we are now working in partnership with several organisations that can help you into employment or education or training. What’s more, these services are completely free of charge and available locally!

As our records indicate that you are **not** currently employed or taking part in education or training we intend to share your contact details with these services so that they can get in touch with you and you can tell them the type of help you would like to receive.

The information about you that we intend to share with them will be some or all of the following:

* Your name
* Your address
* Your contact number

If you do not want us to share your information with some or any of the service providers, just let us know by sending an email with your name and address and the message ‘Opt out’ to XXXXX . You can do this at any time.

You can also email us to let us know if our records are incorrect. If they are, or if you have received this letter in error, please accept our apologies for any inconvenience caused. Just let us know and we will amend our records as quickly as possible so that you are not contacted in error again.

You can access more information on exactly who we intend to share your information with and the type of service they provide by entering the word NEET into the search engine at XXXXX

You can also call to speak to us about this letter or how you can access support into employment, education or training by calling us on XXXXXXX

Regards

**Appendix 2: Sample borough database**



**Appendix 3: Sample data sharing agreement**

**INFORMATION SHARING AGREEMENT (REFERRALS)**

**16-18 Participation in Education Employment or Training (EET) and support for those young people who are Not (or at risk of not being) in Education, Employment or Training (NEET)**

**BETWEEN**

**LONDON BOROUGH OF XXX**

**and**

**INSERT NAME OF PROVIDER**

together referred to in this Agreement as the Parties and each as a Party.

**covering the period**

**1 JANUARY 2017 UNTIL 31 AUGUST 2020**

1. **INTRODUCTION**

Under the Education and Skills Act 2008 (ESA 2008) local authorities have a statutory duty to ‘assist, encourage and enable’ young people aged 13 to 19 (and young adults with a learning difficulty and/or disability up to the age of 25) to participate in education or training. This responsibility includes tracking young people’s participation. In addition, the ESA 2008 places two new duties on local authorities with regard to 16 and 17 year-olds relating to Raising the Participation Age (RPA):

* A local authority in England must ensure that its functions are (so far as they are capable of being so) exercised so as to promote the effective participation in education or training of persons belonging to its area to whom Part 1 of ESA 2008 applies, with a view to ensuring that those persons fulfil the duty to participate in education or training.
* A local authority in England must make arrangements to enable it to establish (so far as it is possible to do so) the identities of persons belonging to its area to whom Part 1 of ESA 2008 applies but who are failing to fulfil the duty to participate in education or training.

Local authorities are required to collect information about all young people from year 11 to year 14, so that those who are not participating can be identified and given support to re-engage. This information is used to ensure that that suitable education and training provision is available, that resources can be targeted effectively and that young people can be referred to appropriate 3rd party provision for support.

This Information Sharing Agreement (“Agreement”) has been developed to ensure information sharing for the purpose of tracking and providing support to young people to enable them to fulfil their duty to participate in appropriate Education, Employment or Training (EET), as well as enabling the Local Authority to fulfil statutory duties placed upon them through the ESA 2008. The Agreement has been produced to ensure that all personal, sensitive and non-personal information shared between the Local Authority and the Provider is shared in appropriately and for the purposes it was intended, i.e. fulfilment of our duties as per ESA 2008.

Data Controller shall have the same meaning as in Section 1(1) of the 1998 Act;

Data Subject shall have the same meaning as in Section 1(1) of the 1998 Act;

Personal Data shall have the same meaning as in Section 1(1) of the 1998 Act

Sensitive Personal Data shall have the same meaning as in Section 2 of the 1998 Act;

For the avoidance of doubt, this Information Sharing Agreement at all times requires the parties to comply with all Eight Data Protection Principles set out in the DPA and nothing in this Agreement shall be interpreted in such a manner that results in a breach of any such Principles.

The Local Authority is the Data Controller of the information held by it and processed for the purposes of fulfilling statutory duties placed upon it through the ESA 2008.

1. **PRINCIPLES & PURPOSE**

This Agreement identifies what information and how exchange of information will take place between Local Authority and the Provider, as well as describing the activities for which the information can be used. It outlines the principles and operational guidelines for how personal information relating to an individual who is in Scope of this agreement is securely managed between Local Authority and the Provider and for the purpose of tracking young people’s participation and encouraging and supporting young people to participate in EET.

These arrangements are for all young people aged 13 to 19 and young adults with a learning difficulty and/or disability up to the age of 25 (“Scope”).

This Agreement does not give blanket or unrestricted licence for the wholesale sharing of information. Information sharing must take place within the constraints of the law, relevant guidance, and service specific requirements and is underpinned with the ethos of informed consent and client confidentiality being tantamount to any information sharing between local authorities and education/training providers.

Young people have the right to confidentiality and therefore information that identifies individuals should be shared only when there are clear and valid reasons for doing so. This Agreement sets out the conditions under which information should be shared for the purpose of tracking young people’s participation and to make available to all young people aged 13-19 and to those between 20 and 25 with special educational needs and disabilities (SEND), support that will encourage, enable or assist them to participate in education or training under Section 68 of ESA 2008 (section 68 ESA 2008.

The aim of this Agreement is to share young people’s information safely in compliance with the law, whilst respecting a young person’s rights to privacy and confidentiality.

To ensure that young people’s information is adequately and appropriately protected, the Agreement between the Local Authority and Provider will be employed as a formal agreement for the exchange and sharing of young people’s personal information plus defining the activities which the information can be used for.

The Provider and Local Authority are fully committed to ensuring that if they share information and data for the purpose of tracking, encouraging and supporting young people’s participation, it is in accordance with their legal, statutory and common law duties, and, that it meets the requirements of any additional guidance.

The Local Authority will supply the following information to the Provider for the sole purpose of tracking, encouraging and supporting young people’s participation as defined in section 68 of ESA 2008:

* Name;
* Date of birth;
* Address;
* Contact details (e.g. telephone number, e-mail address);
* Last known place of EET participation (e.g. school, college or provider name)

The Provider will only use the information for the sole purpose of tracking, encouraging and supporting young people’s participation as defined in section 68 of ESA 2008, specifically to contact individuals by appropriate means to:

* confirm the young person’s participation status in education, employment or training;
* offer appropriate support to those young people identified as not participating as soon as possible to enable then to re-engage and sustain participation in education, training or employment with accredited training;
* offer appropriate support to those young people identified as at risk of not participating as soon as possible to enable then to sustain participation in education, training or employment with accredited training;
* provide regular updates to the Local Authority on the EET status of the individuals.

These activities may include (but not exhaustive): careers information advice and guidance, mentoring, re-engagement provision, training courses, brokerage of appropriate specialist support – by telephone, written correspondence and/or face to face contact. The Provider will provide details of these activities in ***Annex A.***

If within 15 working days (or other term as agreed) of receipt of the initial information from the Local Authority, the Provider is either i) unable to contact the young person or ii) the young person refuses to engage/accept support, the Provider will inform the Local Authority and will securely destroy the information. No further contact with the individual will be made by the Provider.

1. **CONSENT & DATA PROTECTION**

Principle 7 of the Data Protection Act 1998 requires that appropriate measures should be in place to protect personal information from unauthorised access, loss, damage or destruction. The Local Authority and Provider are responsible for the security of information they receive and hold. The Provider and Local Authority must take all necessary care and employ appropriate physical, technical and organisational safeguards to protect the personal data under this Protocol. The Provider must agree with the Local Authority the standards required for protecting the data, for example, safeguards for information in electronic format, security of data in transmission.

It is policy to gain young people’s consent to share their information wherever practical. If information sharing is necessary, but the gaining of consent is impractical (e.g. where there has been no contact with the young person for a period of time) information can still be shared between the Local Authority and the Provider. The legal basis for sharing without consent in this instance is that it is necessary for the exercise of the Secretary of State’s function of providing services under Section 114 of the Learning and Skills Act 2000. This is in conjunction with the Children Act 2004 section 10, 11 and 12 and the Education and Skills Act 2008.

The Data Protection Act 1998 has put in place numerous safeguards regarding the use of personal Data by organisations. The Act gives rights to those about whom Data is held, known as data subjects. This includes:

* the right to know the types of data being held;
* why it is being held; and
* to whom it may be communicated.

Privacy notices are designed to meet those needs of the Act. The subject’s consent to share information is covered by the Providers individual privacy notices. Privacy notices must be issued to new learners at the Provider for which data is being provided in the school census or Individualised Learner Record (ILR).

1. **THE LEGAL FRAMEWORK FOR SHARING**

The principal legislation concerning the protection and use of this information is listed below:

* Education and Skills Act 2008
* Education Act 2011
* Human Rights Act 1998 (article 8)
* Freedom of Information Act 2000
* Data protection Act 1998
* Common Law Duty of Confidence
* Other legislation may be relevant when sharing specific information
1. **BREACH OF AGREEMENT**

In accordance with the Data Protection Act, the Data Controller maintains all responsibility for personal information regardless of whether a Data Processor is acting on behalf of the Data Controller in that instance. If this Protocol is breached the Data Controller will bear responsibility. The Data Controllers covered in this Protocol should therefore ensure that they have taken appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss to, destruction of, or damage to, personal Data. If the Data Processor uses the data covered in this Protocol in an unlawful manner they may be subject to prosecution.

Without prejudice, any breach of the Protocol shall constitute a material breach, and thus the responsible party will notify the Protocol partner as soon as it is discovered, and shall use best endeavours to rectify any breach assessing the extent and risk to any individual persons whose Data has been lost, damaged or misused, in order to minimise and to mitigate its effects.

**6. GENERAL RESPONSIBILITIES**

6.1 Each party to this agreement is responsible for ensuring that their organisational and security measures protect the lawful use of information shared under this Agreement.

6.2 Parties will ensure a reasonable level of security for supplied information, personal or non-personal, and process the information accordingly.

6.3 Parties accept responsibility for independently or jointly auditing compliance with the data sharing agreement to ensure statutory reporting can be completed to schedule

6.4 Parties should consider making it a condition of employment that employees will abide by their rules and policies in relation to the protection and use of confidential information. This condition may be written into employment contracts and any failure by an individual to follow the policy should be dealt with in accordance with that organisation’s disciplinary procedures.

6.5 The signatory originally supplying the information should be notified of any breach of confidentiality or incident involving a risk or breach of the security of information.

6.6 Parties should have a written policy for retention and disposal of information.

6.7 Parties must be aware that a data subject may withdraw consent to processing (i.e. Section 10 DPA) of their personal information. In this case processing can only continue where an applicable Data Protection Act schedule 2, and if relevant schedule 3, purpose applies. Where the Provider rely on consent as the condition for processing personal data then withdrawal means that the condition for processing will no longer apply. Withdrawal of consent should be communicated to the relevant party and processing cease as soon as possible.

6.8 Staff should only be given access to personal data where there is a legal right, in order for them to perform their duties in connection with the services they are there to deliver.

6.9 Each party should ensure that any of its staff accessing information via this Information Sharing Agreement are trained and fully aware of their responsibilities to maintain the security and confidentiality of personal information.

6.10 All shared information, personal or otherwise, must only be used for the purpose(s) specified at the time of disclosure. Therefore any further uses made of this data will not be lawful or covered by this Data Sharing Agreement.

6.11 The Provider shall not share personal information with a 3rd party unless the individual’s explicit consent has been received to do so.

**7. INDEMNITY**

7.1 Each party to this Information Sharing Agreement will keep the other fully indemnified against any and all costs, expenses and claims arising out of any breach of this agreement and in particular, but without limitation, the unauthorised or unlawful access, loss, theft, use, destruction or disclosure by the offending party or its subcontractors, employees, agents or any other person within the control of the offending party of any personal data obtained in connection with this agreement.

**8. TRAINING**

8.1 Every individual working for both parties to this Information Sharing Agreement is personally responsible for the safekeeping of any information they obtain, handle, use and disclose.

8.2 Every individual should know how to obtain, use and share information they legitimately need to do their job.

8.3 Every individual has an obligation to request proof of identity, or takes steps to validate the authorisation of another before disclosing any information requested under this Information Sharing Agreement

8.4 Both parties’ staff processing information shared under this Information Sharing Agreement are expected to be trained to a level that enables them to undertake their duties confidently, efficiently and lawfully. This is an obligation on both parties and responsibility for it cannot be assigned to another organisation, although delivery of training can.

**9. CONCLUSION AND REVIEW**

This agreement acknowledges and provides a means whereby members of the public, staff, providers and the local authorities can be confident that where information and data is shared between the Local Authority and the Provider for the purpose of tracking young people’s participation and supporting young people to participate in EET, it is done so appropriately and securely and will not be utilised outside the scope of tracking and supporting young people’s participation for the purposes of delivering the duties outlined in section 68 of the ESA 2008.

This Information Sharing Agreement will be formally reviewed within a three year cycle by both signatories, or earlier if statutory requirements and/or policy are amended. Either signatory can request an extraordinary review at any time where a joint discussion or decision is necessary to address local service developments.

**1**

**10. DECLARATION AND AGREEMENT**

We the undersigned have read and fully understand the contents of this Information Sharing Agreement, and confirm agreement and compliance.

**Signed on behalf of the London Borough of XXX**

**Signed on behalf of the Provider:**

**ANNEX A: ISA POST-16 PARTICIPATION – SUMMARY OF INFORMATION USE**

**TO BE COMPLETED BY THE PROVIDER AND RETURNED WITH THE SIGNED INFORMATION SHARING AGREEMENT FOR 2017-2020**

**PROVIDER NAME:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **DESCRIPTION OF THE DATA REQUESTED/RECEIVED** | **WHAT ACTIVITIES WILL BE THE DATA BE USED FOR? PLEASE STATE SPECIFIC ACTIVITIES** | **ARE YOU PLANNING TO CONTACT THE DATA SUBJECTS?****PLEASE STATE YES/NO & PROVIDE DETAILS** | **NAMES & CONTACT DETAILS OF STAFF WHO ARE DULY AUTHORISED TO PROCESS AND ACCESS THE INFORMATION** | **LEGAL BASIS FOR RECEIPT & USE OF THE INFORMATION** |
| The following information related to individuals aged 13-25 years who are resident of the London Borough of XXXX and/or attending a XXXX school:* Name;
* Date of birth;
* Address;
* Contact details (e.g. telephone number, e-mail address);
* Last known place of EET participation (e.g. school, college or provider name)
 | **TO BE COMPLETED BY PROVIDER** | **TO BE COMPLETED BY PROVIDER** | **TO BE COMPLETED BY PROVIDER** | To assist, encourage and enable young people aged 13 to 19 (and young adults with a learning difficulty and/or disability up to the age of 25) to participate in education or training:* Learning & Skills Act 2000
* Children Act 2004
* Education & Skills Act 2008 (section 68)
 |

**Appendix 4: Sample opt-out letter**

Addressee

Date

Dear

**Your Personal Information**

We are writing to you because you are living or educated in the London Borough of XXXXXX area. As part of our statutory duty we are responsible for collecting information to help us plan support, learning and progression opportunities for young people.

**How we keep your information safe**

XXXXXX keeps information about you on computer systems and sometimes on paper. There are strict controls on who can see your information and if we publish any information for research, monitoring or planning reasons, we always remove personal details such as names and addresses.

**Changes in how we will use your personal information**

We are required to collect general information about your current learning situation, support you have received and next step choices from surveys and education/training providers. This information is used within the local authority to offer relevant services to young people and it is also shared with the Department for Education.

You have a legal duty to continue in learning or employment with accredited training until your 18th birthday.

To help support you to do this we would like to share the following personal information with post 16 education or training establishments that will be relevant to you, other relevant Council departments, and, if applicable, your current learning establishment.

* Name
* Address
* email address
* Gender
* Education, training and employment history
* Current learning situation

**How Learning Providers should use and manage your information**

The information shared will enable only relevant learning providers to understand your next steps and help plan the learning opportunities below:

* Staying on at the school
* Going to another school sixth form
* Going to college
* Taking an apprenticeship
* Entering employment with training
* Self employment or volunteering with training

It’s important to note that Education and Training Providers are obliged to handle your information completely in accordance with the Data Protection Act 1998 and cannot share it further.

If you are concerned about your information being shared, would like to opt out, or would like more information contact us at XXXXXX.

Yours sincerely.