Parishes and the GDPR

**Frequently Asked Questions**

**Q1. Do parishes now have to be fully compliant with UK GDPR?**

**Yes.** UK GPDR and the related regulations have now been in force for over two years and there is an expectation that parishes will have taken the necessary measures to ensure that they are compliant with the requirements of the new legislation. (November 2020)

**Q2. Do we always need consent to hold an individual’s data?**

**No.** There are six lawful bases for processing data under UK GDPR, one of which is consent. If you review the example parish privacy notice provided on our website, you will see there are different bases used within a parish. For example, some processing is legally required, or can be done in the legitimate interests of the data processor.

**Q3. Will all data breaches receive huge fines?**

**No.** The upper limit for fines is much higher than previously, but the ICO has already said it much prefers the carrot to the stick and has in fact never levied the current maximum fine even in the most serious data breaches. Parishes will still need to have a privacy notice available along with clear procedures to show how they manage breaches. Failing to comply with UK GDPR can also lead to loss of reputation and public trust so it is important for parishes to implement UK GDPR.

**Q4. Can we still publish our electoral roll?**

**Yes.** You can and must publish your electoral roll.

The Church Representation Rules (CRR) require publication of your electoral roll, which provides a legal basis for processing personal data under UK GDPR.

The UK GDPR principle of data minimisation requires that you only process the data that is necessary to achieve your specific purpose. Therefore, we advise parishes to publish their Electoral Roll in the form: First Name; Surname; and if the person is Resident (R) or Non-Resident (NR) of the Parish. This is arguably the minimum information required for the congregation to identify if there are any mistakes or omissions on the Electoral Roll. In addition, if there is someone in a sensitive position (e.g. prison, police, army etc.) and where publication of these details could cause harm or damage, then their name should not be displayed.

**Q5. Are there UK GDPR implications of the Incumbent being a separate legal entity?**

**Yes.** As the incumbent is a separate legal entity to the PCC they can act as an independent data controller or as a joint data controller with the PCC, as they manage personal data provided by data subjects in line with UK GDPR.

**Q6. My parish is in a multi-parish benefice. Do we need separate consent forms and privacy notices?**

**No.** Provided you make it clear in your privacy notice and consent form that you are processing the data on behalf of the whole organisation – whether a single or a multi-benefice organisation - then you can use a single privacy notice and consent form.

**Q7. Does each parish need to appoint a Data Protection Officer (DPO) and register with the Information Commissioner’s Office (ICO)?**

**No.**  Individual parishes should not appoint a DPO but may have to register with the ICO (see page 16 of the toolkit for parishes for more information).

Appointing a DPO makes an organisation subject to further UK GDPR requirements and this is only necessary where “core activities consist of large-scale processing of special categories of data” which does not apply to parishes. We recommend that a different role title is given to the person taking a lead in managing data protection within your parish such as Data Protection Lead.

The need for data controllers to register with the Information Commissioner’s Office (ICO) is removed under the UK GDPR. However, under the Data Protection (Charges and Information) Regulations 2018 there is still an obligation to pay a data protection fee to the ICO. Parishes with CCTV will need to pay this fee, however there is an exemption under the Data Protection (Charges and Information) Regulations 2018 which states that a not-for-profit organisation would not have to pay if it carries out processing for establishing and maintaining membership of an organisation, or for providing activities for individuals who are members or who have regular contact with it. We are currently in discussions with our legal team, the national church and the ICO to provide definitive guidance on this point.

**Q8. Can we still capture and process information on children under UK GDPR?**

**Yes.** For children under the age of 13, you will need parental consent in order to process their personal data lawfully if consent is the basis for processing.

Other than this, there is little fundamental change to the rights of children, who are considered as individuals in their own right. Children’s data is covered by the fact that children are considered to be a vulnerable group and therefore warrant specific consideration and protection (i.e. they must be provided with clear information about what, why, how etc, and must be able to understand the risks, consequences and safeguards and their rights), but otherwise are accorded the same protections as adults in the UK GDPR.

Specifically:

1. a. You must have clear and age-appropriate privacy notices for children.
2. b. The right to request erasure is particularly relevant when consent was given when the individual was a child.
3. c. The concept of competence remains valid under UK GDPR. You may wish to give an individual with parental responsibility for a young child the ability to assert that child’s data protection rights on their behalf or consent to processing their data.
4. d. If an older child is not deemed competent to consent or exercise their own rights you may allow an adult to do this.
5. e. You can still process a child’s data under legitimate interests.
6. f. With regard to a youth group mailing list, for example, parental consent may still be appropriate depending on age and competence i.e. do the children understand the implications of the collection and processing? If yes, they can give their own consent unless it is clear they are acting against their own interests.

**Q9. Safeguarding advice appears to be – keep everything. Is this in conflict with the data subject’s right to be forgotten?**

**No.** The right to request erasure, also known as the right to be forgotten, is limited to certain situations: for example, where the personal data is no longer necessary for the purposes for which it was collected or processed; where the data subject withdraws consent to the processing; where consent is the legal basis relied upon to process the personal data.

Retaining records and processing personal data in line with the “A Safe Church” diocesan safeguarding policy <http://southwark.anglican.org/safeguarding/diocesan-policies-and-procedures> constitutes data processing under legitimate interests basis rather than consent and may require personal data to be kept indefinitely. This is supported under UK GDPR.

**Q10. A diary or parish magazine from twenty years ago can show that someone was not where it is alleged they were, or was not a churchwarden when they claimed to be. Should church members and church officers be keeping such archive material?**

**Yes.** Material, such as the parish magazine, is already in the public domain the so called “right to be forgotten” will be irrelevant because the material in question is already publicly available. Indeed, it would be completely impractical to request individuals destroy material, such as parish magazines, that has been made publicly available.

**Q11. Can we still pray for people by name in our church services?**

**Yes.** Parishes need to decide what is suitable in their own context when setting their policy on prayer lists. What is appropriate in a small church may not be appropriate in large civic service in a cathedral.

The ICO have published the following guidance on prayer lists which states that “If this is something that the parishioner concerned might reasonably expect and welcome and the church can justify processing their health data, then it is unlikely to be breaching the law.”

<https://ico.org.uk/about-the-ico/news-and-events/blog-sleigh-ing-the-christmas-gdpr-myths/>

Some points to consider in setting your policy for prayer lists include:

* the UK GDPR principle of data minimisation: what is the minimum information you need for a person and their health condition to pray for them?
* the UK GDPR principle of data security: how much information provided verbally, printed in pew sheets or available on a website?
* that UK GDPR entitles people to object to their data being processed; how does an individual get themselves removed from the prayer list and what would that entail?
* generally prayer for individuals is data processing on the basis of consent but in some cases the person is not able to provide consent; what is your policy around capturing consent for individuals (which can be verbal) or deciding what prayers members would “reasonably expect and welcome.”

**Q12. Do we need to provide full names and contact details of our PCC members to the Charity Commission?**

**Yes.** If you are registered with the Charity Commission and the members of the PCC are trustees the Charity Commission requires information from trustees as described in their privacy notice: <https://www.gov.uk/government/publications/update-charity-details-privacy-notice/update-charity-details-privacy-notice>

The information required includes legal name, role, date of birth, date of appointment, address, post code, telephone number, email address and date of resignation. This constitutes processing under legitimate interests so you will need to inform trustees of this requirement but will not need to capture their consent.

**Q13. Can we make contact with the relatives of people whose ashes or remains are interred in our churchyard to ask whether they would be willing to contribute to the general upkeep of the churchyard?**

**No**. This would be considered “Direct Marketing” and would therefore require opt in consent from the individuals prior to contact being made.

In contrast, inviting people to an All Souls / bereavement service / community celebration however would come under legitimate interests (e.g. pastoral care) and could be a reasonable expectation of being part of the service offered by the church.

There is a useful article on giving and fundraising from the parish resources website here: <https://www.parishresources.org.uk/wp-content/uploads/GDPR-and-Giving-Reviews.pdf>

If you have any questions or queries on UK GDPR, please e-mail your questions to data@southwark.anglican.org

This document is based on FAQs published by the Archbishops’ Council here: <https://www.parishresources.org.uk/wp-content/uploads/GDPR-FAQ.pdf>