GDPR AND CHARITY DATA

What Third Sector Leaders Need to Know

CONTENTS

INTRODUCTION

GDPR will usher in sweeping changes to how charitable organisations gather, store and process the personal data of their users and supporters. It's seen by many as simply a compliance headache with little in the way of returns, but for a sector struggling to regain public trust, a new approach to data protection is timely and brings far-reaching benefits.

In 2016, the Charity Commission[1] found that public trust and confidence in charities was at its lowest level since monitoring began in 2005, with 18% of respondents giving the reason "they use pressurising techniques, including in fundraising", and 9% of the public saying that the most important factor in their trust and confidence in charities is effective management.

The high-profile collapse of Kids Company has further eroded public trust in charitable organisations, as did the recent fines handed out by the Information Commissioner's Office to several large charities for swapping or selling donor lists. And, as the above mentioned report makes clear, larger charities suffer more from this perceived lack of good governance than smaller charities.

Opportunities for third sector organisations, and for high-profile charities in particular, to mend their reputations are not to be sniffed at.

The EU's General Data Protection Regulation (GDPR) comes into force in the UK in May 2018, and represents just such an opportunity.

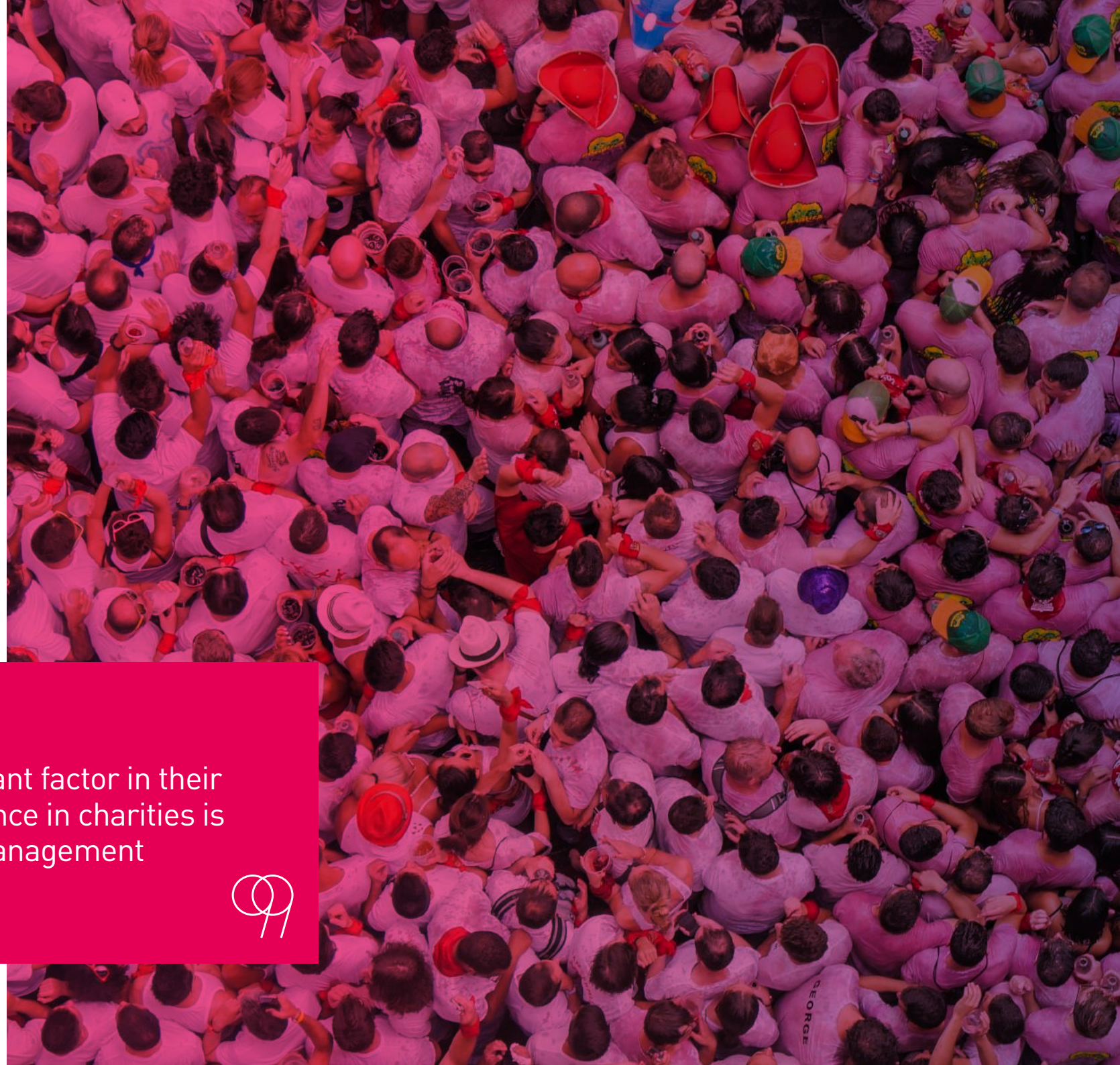
GDPR finally brings data protection regulation into the age of cloud-computing, reigning in the slapdash attitudes to user protection caused by outdated rules. It democratises privacy concerns, removing them from the exclusive clutches of lawyers - and not before time - through the creation of clear, plain-English guidelines for how to collect, store and use personal data, and by insisting that organisations use similarly transparent language to obtain consent and communicate how they're going to use people's data.

[1] Charity Commission, Public trust and confidence in charities 2016
https://www.gov.uk/government/publications/public-trust-and-confidence-in-charities-2016

The organisations that lead the way in successfully and visibly implementing procedures and policies which comply with GDPR, in both spirit and letter, will send a strong signal to stakeholders, supporters, potential supporters and the wider public that they take people's digital rights and freedoms seriously.

This guide is designed to help leaders in the third sector devise a strategy for GDPR adoption. It is not designed to be an authoritative instruction manual, nor is it legal advice. It is, however, part of our commitment to protect our customers and clients. We are happy to share what we have learned with you.

> The most important factor in their trust and confidence in charities is effective management



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WHAT IS GDPR?

GDPR replaces the existing data protection regime, 1995's Data Protection Directive. In the UK we know it as the Data Protection Act of 1998.

We have taken a very different view of GDPR compliance, and we want to explain why that matters.

When GDPR's final form began to take shape in 2015, we thought its provisions were a straightforward upgrade to an outdated law: a cumbersome but necessary process to bring 1995's data protection rules out of the dial-up era and into the cloud. We were aware that people were losing trust in businesses due to today's growing privacy concerns, and saw GDPR as an opportunity to put that right.

We were glad that GDPR would bring issues to the forefront which we had been advising clients on for quite some time.

In hindsight, our perspective from 2015 was the product of a very different time. In two short years, the data protection and privacy landscape, and the world we work in as digital professionals, has changed beyond all recognition.

Shifting political currents - some of which are openly racist, xenophobic, and authoritarian - have put everyday users of online services at real risk.

We feel that we have a role to play in safeguarding the people who use the services we build. GDPR compliance is a part of that.

In a world where data can be used as a weapon, we no longer look at data protection as a matter of legal compliance. We view it as an act of social responsibility, user protection, and, quite possibly, as a safeguard against what may be to come.

You have a role to play as well. This guide will explain what you need to know.

WHAT IS PERSONAL DATA?

GDPR, and the EU's principles of data protection and privacy in general, pertain to **personal data**.

Personal data, for our purposes, means information about a living individual who could be identified from that data, either on its own or when combined with other information. GDPR officially defines personal data as "any information relating to an identified or identifiable natural person."

Your customer records, and the data that people generate using or accessing your services, are personal data.

> any information relating to an identified or identifiable natural person

SENSITIVE PERSONAL DATA

Beyond personal data there is also **sensitive personal data**, which is defined as any information concerning an individual's:

- Racial or ethnic origin
- Political opinions
- Religious or philosophical beliefs
- Trade union membership
- Health data
- Sex life or sexual orientation
- Past or spent criminal convictions

REMEMBER

Sensitive personal data requires stricter curation, and the loss or breaches of such data rightfully carries stricter punishments.

EXPANDING THE DEFINITION OF PERSONAL DATA

The 1995 data protection principles established that personal data must be:

- Processed in a manner which is fair and lawful;
- Used only for the manner in which it was intended to be used;
- Processed in a manner which is adequate, relevant, and not excessive;
- Accurate and kept up to date;
- Not kept for longer than its intended purpose;
- Processed in accordance with the rights of the people the data is about;
- Protected by technical and organisational security measures;
- Not transferred to third countries outside the EU which do not guarantee an adequate measure of data protection.

GDPR continues these principles, expands upon them, and adds additional responsibilities.

GDPR **expands the definition of personal data** from the 1995 standard to include an individual's:

- Genetic data
- Biometric data
- Location data
- Online identifiers

The latter definition, online identifiers, is critical to digital businesses.

Any information created through interaction with a site, app, wearable, or online service which could identify the individual - whether that is an analytics record, a check-in map, a health tracker, or the information exchanged through a social media login - is personal data.

That data may well also be sensitive.

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DOES GDPR AFFECT YOU?

European data protection law is universal and extraterritorial. It applies to all personal data about individuals collected or processed in Europe regardless of those individuals' nationality or citizenship. It also applies across all sectors, industries, and situations.

This means that GDPR applies to the data you collect and process about Europeans even if your organisation is not based in Europe and/or has no physical or incorporated presence there.

In the event of a privacy concern or data breach, claims such as "we are not in Europe" or "we were not aware of the rules" will merit no sympathy from Europe's national data protection regulators. Being aware of GDPR, and meeting your legal requirements, is the price of doing business in Europe.

DATA PROCESSOR, CONTROLLER, OR BOTH?

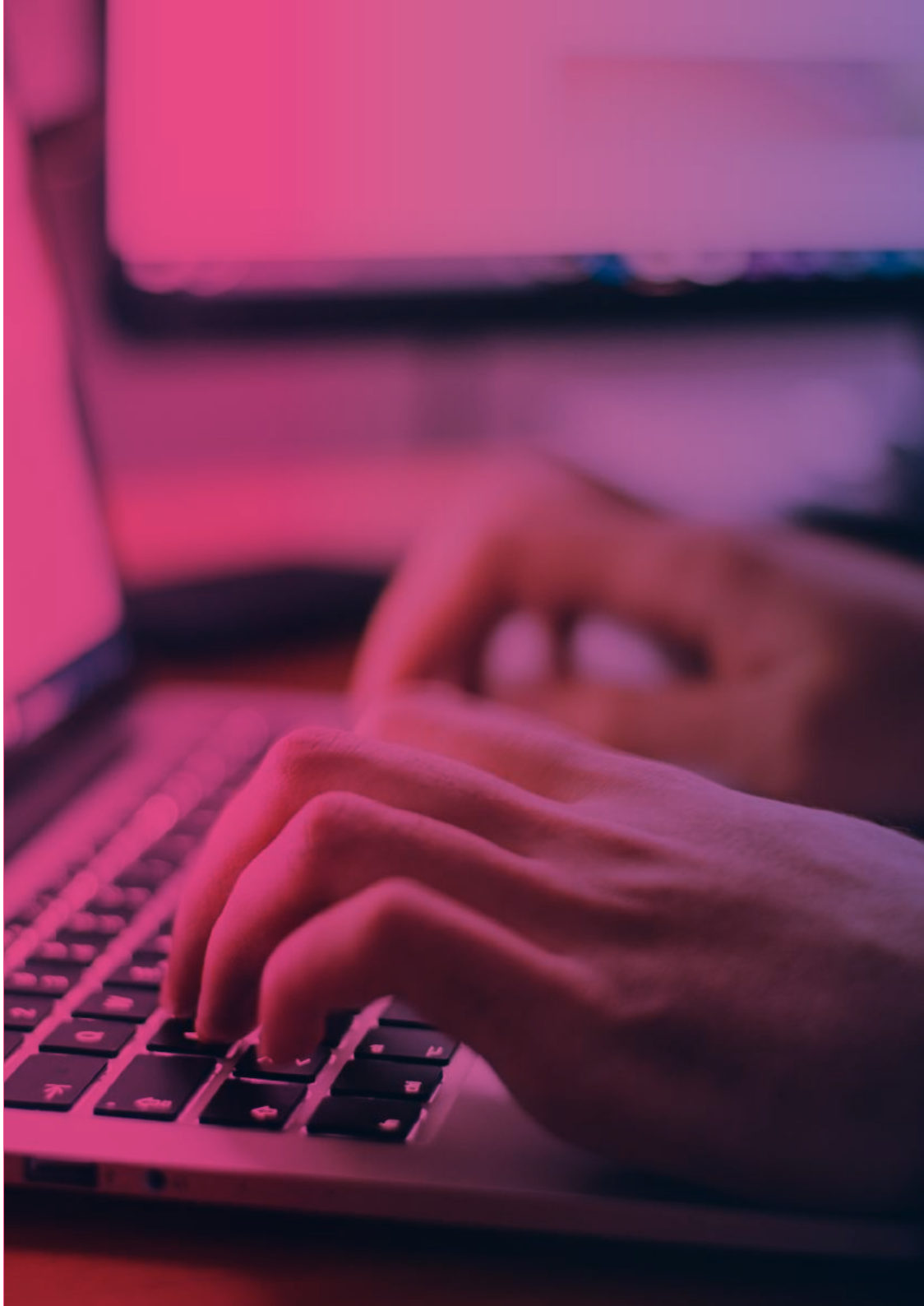
The amount of work that will be required to achieve It is equally important to know who data protection rules impact.

The data controller is a person (meaning a business, an organisation, or so on) who determines the purposes for which, and the manner in which, any personal data is processed. “Processed” simply means “used”.

The data processor is any person, other than an employee of the data controller, who processes the data on behalf of the data controller.

In your work, you may be a data controller, you may be a data processor, or you may be both. You may handle personal data you collect and you may handle personal data passed to you by a client. It should all be protected with the same rules and the same attention.

If you operate in Europe, GDPR affects you



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HOW DO YOU BECOME GDPR-COMPLIANT?

Healthy GDPR implementation is an ongoing process incorporated into your everyday processes and workflows.

GDPR compliance within your organisation depends largely on how much work you had put into compliance with the existing 1995 standard.

Those who already had a healthy regard for data protection and privacy will adjust to the new requirements with ease.

GDPR becomes enforceable on 25 May 2018. Compliance cannot begin on the 25th of April. **You need to start now**. Robust compliance requires clear communication across all levels of your organisation from line staff to management to directors. It crosses departments from IT to marketing to development. There are no shortcuts, tick-boxes, magic software, plugins, or certifications.

There are many ways to approach compliance, we found it helpful to split GDPR compliance into three broad areas:

1. Records, information, and communication
2. Protection of individual rights
3. Incorporation of GDPR into our workflows

RECORDS, INFORMATION AND COMMUNICATION

If we were to sum up GDPR in two words it would be: document everything.

GDPR is about knowing what you have, knowing what you are doing with it, knowing where it is stored, knowing who has access to it, and knowing how you are safeguarding it.

You have to know all of this, and you have to document all of this. Some of this documentation will be internal, and some of it, such as your privacy information notices, will be public.

In the event of a privacy concern or a data breach, your national data protection regulator (in the UK, the ICO) will ask to see your documentation. If that evidence is incomplete, or does not exist, the data breach becomes the lesser of your problems.

Your organisation collects both personal and sensitive personal data as a part of your internal processes as well as through the provision of your products and services, campaigning and fundraising activity.

You'll be aware of this.

But there is data you have forgotten as well: old contact form entries retained on databases, emails downloaded to local laptops, analytics logs from long-dead projects. What other data have you forgotten, and where is it hiding?

Keeping records is not just about creating inventories. It is about documenting your processes. We'll deal with this in depth when we discuss Privacy Impact Assessments.

For now though, start thinking creatively about what information you hold and how you curate it.

> Keeping records is not just about creating inventories. It is about documenting your processes.

WHAT IS CONSENT?

Under GDPR, consent is everything. In most circumstances, data collection and processing must be done with the consent of the people that data is about.

Consent must be:

Active: consent is freely given, not enabled by default, and is triggered by the user;

Granular: privacy as multiple choices, not a zero-sum in-or-out. For example, consent to receive a newsletter must not be an automatic opt-in during an account creation process;

Unbundled: users cannot be forced to grant consent for one thing in order to receive another;

Named: the user must be made aware of all specific third parties who will be receiving their data and why they will be receiving it;

Balanced: consent must not create an unfair relationship between the user and the data processor. For example, forcing employees to use a company's internal app which monitors employees' location data outside of work hours would be an unfair relationship;

Verifiable and documented: you must be able to prove who gave their consent, how consent was given, what information they were given, what they agreed to, when they consented, and whether or not the user has withdrawn their consent.

If consent is not given under one of these conditions, then your use of the data must be grounded in a legal basis. This means that your collection and processing of data must be necessary for the performance of a contract, to comply with a legal obligation, to protect the person's vital interests (such as the emergency services), or for the performance of a task in the public interest or in the exercise of official authority.

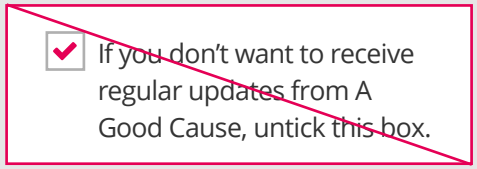
The legal basis can also be that the data is necessary for the purposes of the "legitimate interests" pursued by the controller or third party. This designation should not be abused: any processing done under legitimate interests must be open to scrutiny of that justification.

While GDPR considers 'direct marketing' to be carried out for a legitimate interest, email and SMS communications are also regulated by the Privacy and Electronic Communications Regulations (PECR), which require that explicit consent is obtained.

REMEMBER

Under GDPR, your users retain legal rights over your uses of their data after they have given you consent.

No



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COMMUNICATION

The most basic step involved in GDPR compliance is making **everyone in your team aware** of the ways the law is changing and how it impacts their work.

This means **everyone**: all staff regardless of the nature of their employment, be it salaried, contracted, or temporary staff. It means all staff who handle data regardless of whether data handling is their job.

As discussed earlier, everything in GDPR must be documented. This includes proof that you have made your staff aware of their obligations.

You should incorporate data protection training into your new employee inductions.

For existing employees, conduct regular refresher training. Brief your contractors and temporary staff on your data protection procedures. Document all of this on personnel and hiring records.

Your senior management and Board should take a more in-depth look at compliance requirements and should check in regularly to ensure your organisation is on track.

No one expects everyone in your organisation to become experts on the minutiae of data protection.

They should, however, be made aware of:

- what personal data is;
- what you can and cannot do with it;
- how they should be developing to Privacy by Design;
- how they should secure consent;
- what rights people have over their data;
- what constitutes a data breach, and what internal reporting mechanisms they should trigger in the event that a breach happens.

PRIVACY INFORMATION NOTICES

GDPR requires you to be **much more public and transparent** about the ways you use data. The public face of compliance will be your privacy information notices.

Privacy information notices replace the privacy policies that already exist on your web sites and apps. They also replace the days of privacy statements being drafted by lawyers, for lawyers. The language must be simple and plain in a way that anyone can understand. In fact, if your web site or app is used by children, you are required to present your policy in language that a child can understand.

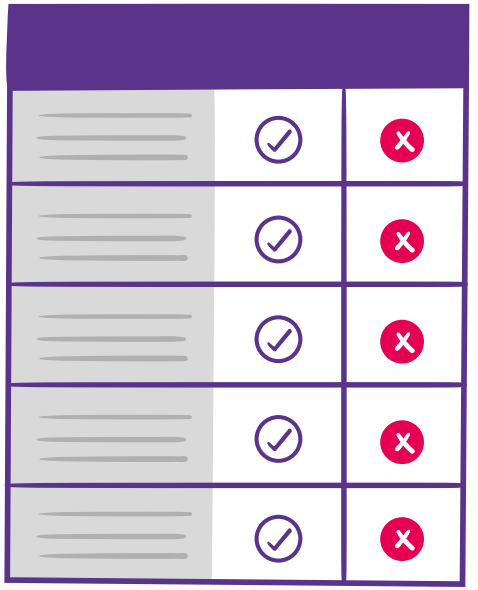
Your statement is a dialogue with your users. A dialogue, of course, works two ways. Privacy information notices must give the users of your services real choices and options.

> "If your web site or app is used by children, you are required to present your policy in language that a child can understand."

Those options should be granular: privacy is not a zero-sum game. The consent they give and the things they consent to, as we will discuss later, can change at any time, for any reason.

Design also comes into play here. Privacy information notices should be presented in an attractive way, such as a table with icons. In fact, many European data protection regulators are devising standardised templates, and you should check with the regulator in your country to find out what yours should look like.

The UK's data protection regulator, ICO, has set forth the specific information which must be included in your privacy information notices.[2]



[2] https://ico.org.uk/for-organisations/guide-to-data-protection/privacy-notices-transparency-and-control/privacy-notices-under-the-eu-general-data-protection-regulation/

DATA PROTECTION OFFICERS

Under GDPR, businesses dealing with certain kinds of information **need to make data protection an actual job**. That job is known as the Data Protection Officer, or DPO.

A DPO does not have to be a lawyer, nor are they required to have any specific set of qualifications. Nor do they need to be in-house: it can be a part-time or contracted role. But the DPO should be competent in the principles of data protection and privacy, committed to the role, and comfortable with raising difficult questions. The DPO must have the authority to challenge anyone across your organisation from the Board on down, and they cannot be fired or even reprimanded for doing so.

Not every organisation needs a DPO. They are only required where core activities involve regular and systematic monitoring of personal data, as well as at organisations which engage in large-scale processing of sensitive personal data. They are also required for public authorities.

> "One way to look at it is this: if you think you might need a DPO, you probably do."

However, businesses outside the requirement are permitted to appoint a DPO voluntarily: a sort of health and safety officer for data protection and privacy issues.

We strongly recommend that every organisation appoints a DPO, either formally or informally, to keep data protection and privacy an everyday concern within your workplace.

Scenario 1:

THE DUSTY OLD DATABASE

You have a large number of contact details in your database for people who are deemed to be 'inactive' - they haven't had any recorded contact with your organisation for some time and you haven't attempted to make contact.

Your fundraising team wants to try to 'reactivate' some of these potential supporters by sending them an email asking if they want to receive regular communications.

BEFORE GDPR

The Data Protection Act didn't set out explicit minimums and maximums for how long you could hang on to personal data. Principle 5 merely requires that you retain personal data no longer than is necessary for the purpose you obtained it for. However, the Privacy and Electronic Communications Regulations (PECR) which sit alongside the DPA already require that you have specific consent before sending marketing emails or texts to individuals. There is a 'soft opt-in' exemption for companies to contact existing customers if they've been given an opt-out, but this doesn't apply to charity fundraising.

UNDER GDPR

Consent must be active and granular. Which means blanket opt-in statements do not give you free reign to contact individuals in perpetuity. If you don't have explicit, documented consent from an individual for a particular kind of email communication, you would be violating the regulation by sending it.

REMEMBER

- **Consent must be active and granular**
- **If you don't have an individual's consent to use their data for a particular purpose, you can't, even if it's only to ask for consent**
- **You're only permitted to use an individual's data without their consent if the use is grounded in a legal basis, e.g. it's necessary to carry out a contract (transactional), provide the most basic level of service, or to comply with a legal obligation.**

PROTECT INDIVIDUAL RIGHTS

The second broad category for our GDPR compliance process is the protection of individuals' rights over their data.

Europeans have always had rights over the uses of their information under the existing data protection regime.

Under GDPR these rights are greatly expanded.

For your business, this means respecting those rights, implementing them into your workflows, and meeting requests to honour individual rights in an open and timely manner.

In addition to the rights that users can invoke, there are also responsibilities you have regarding data security and breaches.

These user rights are:

The right to be informed through privacy notices;

The right to access the data you have collected about them, known as Subject Access Requests;

The right to correct any errors in the data you hold, known as the right of rectification;

The right to the erasure of certain kinds of data, commonly known as the "right to be forgotten";

The right to restrict processing, in other words, your use of their data;

The right to download their data and take it to another service provider, known as the right to portability;

The right to object to your processing of their data;

and

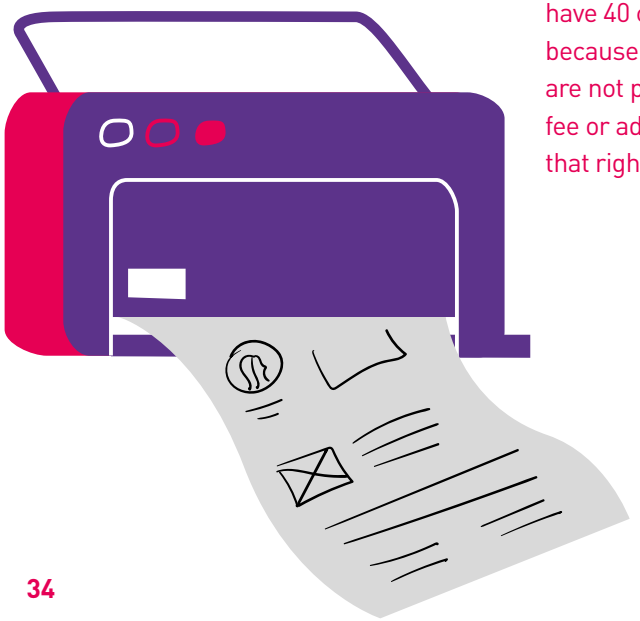
Certain rights in relation to automated decision making and profiling, also known as "computer says no".

SUBJECT ACCESS REQUESTS

Under both existing and new European data protection law, an individual **has the right to request a copy of the information that you hold about them**. This is called a Subject Access Request (SAR).

You can expect to receive SARs from individuals seeking:

- Confirmation that you are processing their data;
- A copy of the personal data that you hold about them;
- A copy of any other information you hold about them, such as details of any data you have passed to third parties, even if the user consented to this.
- There are strict time limits for responding to SARs; in the UK you have 40 calendar days. Additionally, because SARs are a basic right, you are not permitted to charge a user any fee or administrative cost for invoking that right.



REMEMBER

In the UK you have 40 calendar days to respond to SARs.

You must be prepared to respond to SARs quickly, transparently, and cooperatively, and you should devise a SAR process if you do not already have one.

Charities which expect to handle a large volume of SARs may wish to explore developing self-service platforms, such as account logins.

This would allow users to access and download their data directly. This investment would recoup itself in the long run as staff time is freed up to deal with comprehensive requests rather than administrative ones.

RECTIFICATION AND ERASURE

One of the most controversial aspects of data protection law is the right to erasure, which allows individuals to request that a data processor **delete their personal data and/or stop processing it**.

This is frequently referred to as the much-misunderstood "right to be forgotten" (RTBF).

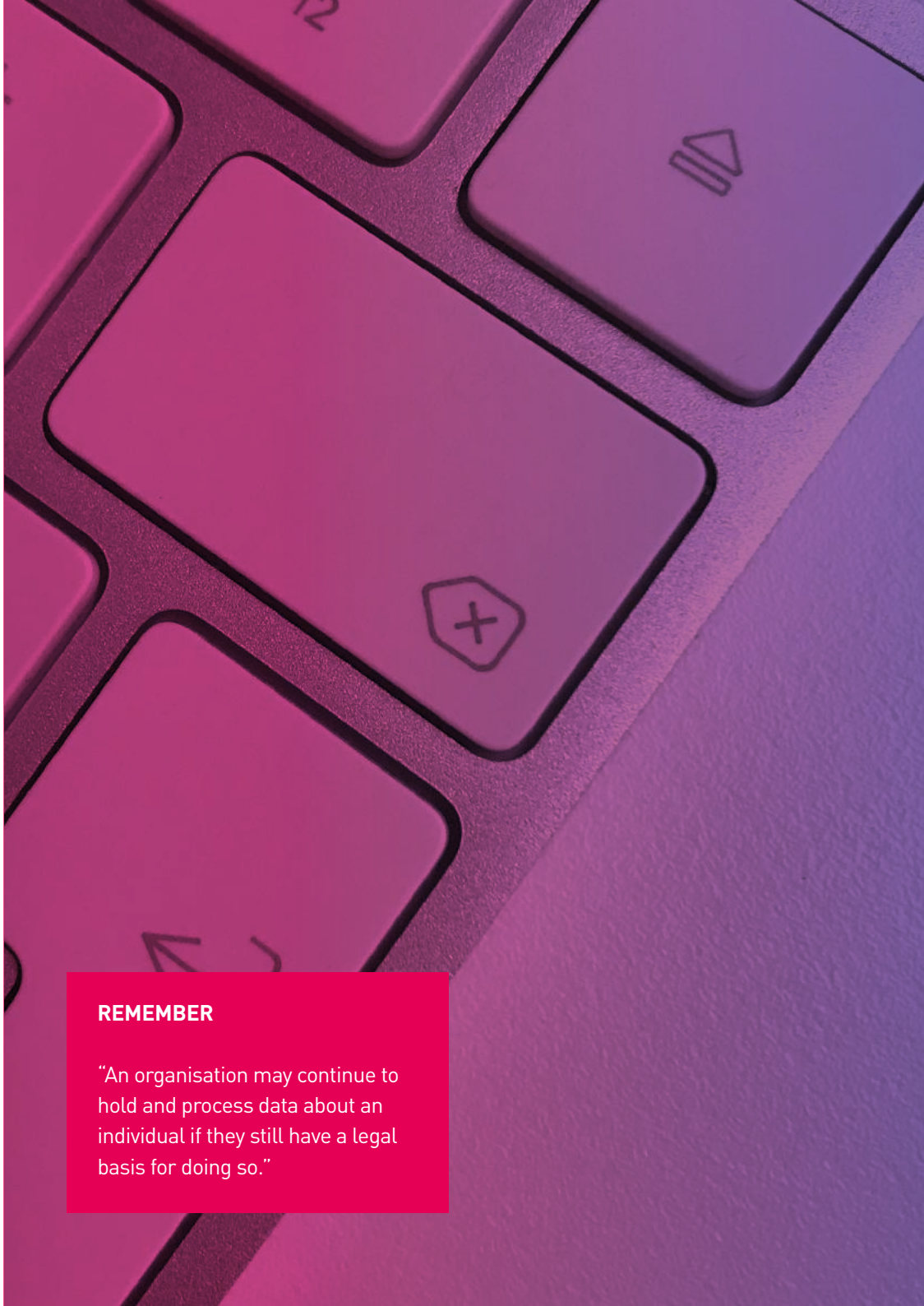
The RTBF is not a get-out-of-jail card, nor is it means of censoring difficult or embarrassing information.

The RTBF can only be invoked if:

- The personal data is no longer necessary;
- The individual withdraws consent for processing;
- The subject objects to processing and there is no legitimate processing need which overrides their request;
- The personal data was unlawfully processed;
- The data must be deleted to comply with a legal obligation;
- The data is about a child.

Even then, the right to erasure is not automatic. An organisation may continue to hold and process data about an individual if they still have a legal basis for doing so, and can continue processing that data for its original purpose.
(In other words, you can't RTBF your credit card bill.)

In addition to the right of erasure, there is the right of rectification. A user has the right to ask you to correct any erroneous information that you hold on them.



REMEMBER

"An organisation may continue to hold and process data about an individual if they still have a legal basis for doing so."

PORTABILITY

An interesting provision of GDPR concerns data portability. **This is the right to obtain your data and reuse it**, if you so wish, on another service.

If you use open source systems such as WordPress you already enjoy the right to data portability. WordPress does not own your content. You can download all your content in an xml file and upload it to any other compatible service you like.

Sadly, not all online services are that enlightened, and so the right to data portability has been brought in to prevent content and user data from being locked behind proprietary walls.

If a person requests a copy of their data, you must be prepared to supply it in a structured, machine-readable, open file format. As with the invocation of all data protection rights, you cannot charge a fee or cost for this right.

If a person's data is mixed with the data of others - for example, someone who has a joint bank account wants to set up their own account at another bank - you must consider and meet the other individuals' data rights in meeting the request.

PROFILING, TARGETING AND MARKETING

Another aspect of individual rights over data concerns **profiling** and **behavioral tracking**.

For our purposes, profiling means **aggregating multiple data points or sources to generate a picture of an individual's:**

- performance at work;
- economic situation;
- health;
- personal preferences;
- reliability;
- behaviour;
- location; or
- movements.

The GDPR provisions regarding profiling are particularly relevant to advertisers and marketers, as well as to businesses which use their services.

As with all aspects of GDPR compliance, profiling is about to get a lot more granular.

Signing up to a service or filling out a form is no longer consent for any number of data-intensive excesses under the name of marketing.

If you are engaging in the profiling of individuals for behavioural tracking or marketing purposes, **you must:**

- Build in PbD and PIAs, which we will discuss later;
- Explain clearly and transparently what data is being collected, what it is being aggregated with, and where it is being sent - all of which must be included in your privacy information notices;
- Obtain explicit and verifiable consent to collect sensitive personal data for profiling;
- Responsibly safeguard any sensitive personal data used in profiling;
- Stop processing the data of individuals for profiling when they invoke their rights to do so, under certain circumstances.

WHAT IS A PERSONAL DATA BREACH?

According to the ICO, a personal data breach is:

"a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed in connection with the provision of a public electronic communications service".

A breach might involve someone outside your organisation viewing, using or stealing personal data. But a breach would also occur if someone within your organisation accessed personal data without authorisation or accidentally deleted or altered personal data.

GDPR requires you to prepare for data breaches in advance. Data breaches, of course, are almost always preventable, so your preparation process is about stopping them as much as possible, and then preparing contingency plans for the worst-case scenario.

REMEMBER

Although you must report breaches to your regulator within 72 hours, you do not have to reveal any information that would jeopardise your ongoing investigation.

Data breach notifications

Under GDPR, certain data breaches must be reported to your national data protection authority within 72 hours.

The rule for reporting is that the breach "is likely to result in a risk to the rights and freedoms of individuals."

A high-risk breach - one affecting large numbers of people or any sensitive personal data - must be reported to the individuals affected immediately **in addition to** the notification to your data protection authority.

Data breach notifications to regulators **must include details about the nature of the breach, such as:**

- What category of data has been breached;
- How many individuals are affected;
- How many data records are involved (as opposed to individuals affected);
- Information on how you were alerted to the breach, and by whom (an internal reporting mechanism or a customer complaint, for example);
- Any available information on who was responsible for the breach, or how it happened;
- What consequences will occur as a result of the breach;
- What measures you have taken to deal with the breach, such as contacting affected service users, mass resetting all passwords, and so forth;
- What measures you will take to deal with any results, such as unauthorised charges to customers' accounts;
- The name and contact details of your DPO or the individual taking the lead on the issue.

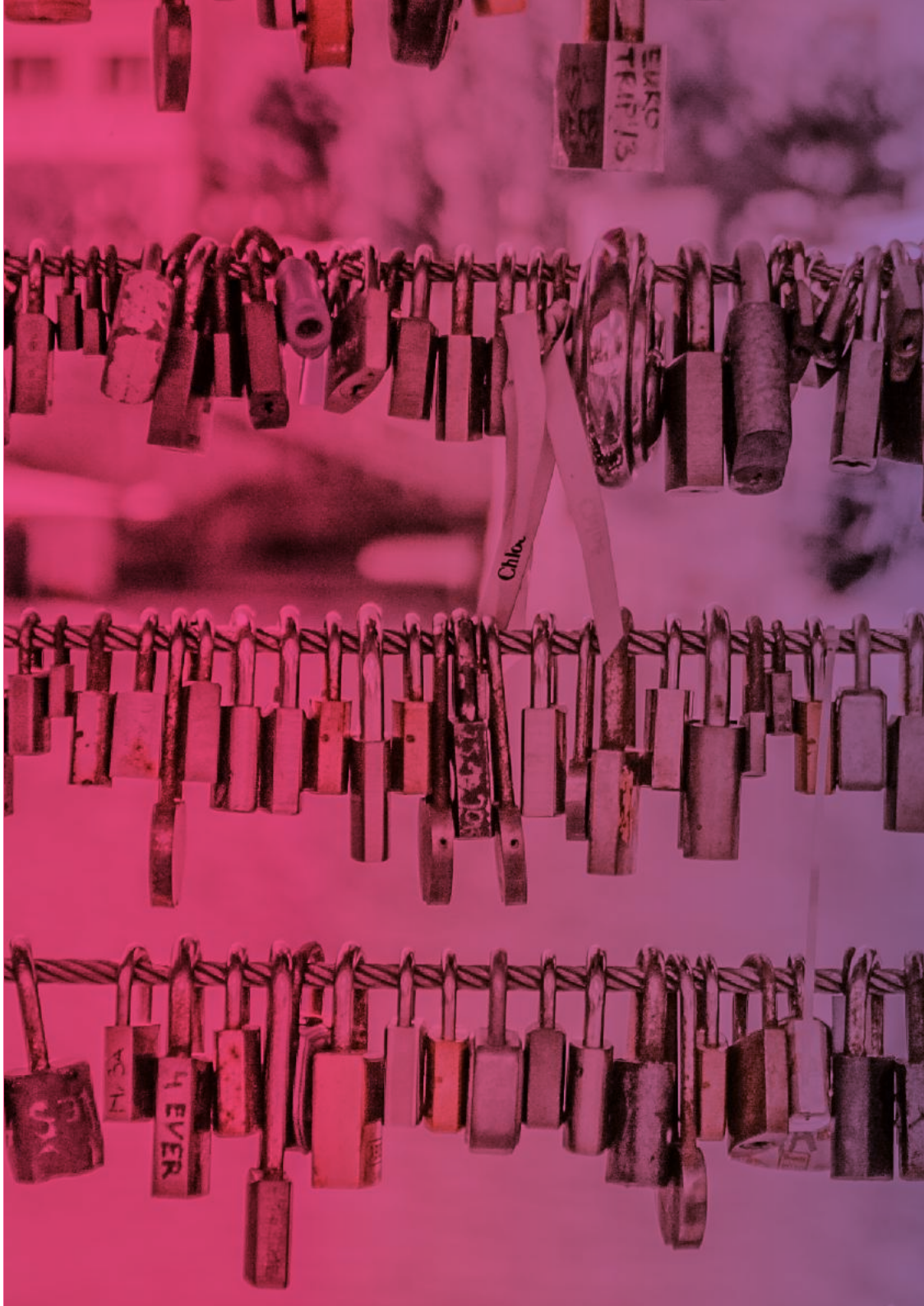
DATA SECURITY

Under GDPR your data security standards become **part of the documented evidence** of your compliance.

In the event of a data breach, your data protection regulator will **expect to see documentation of things like**:

- Password hashing and salting
- Data sandboxing
- Automated updates
- Responsible disclosure
- Penetration testing
- Staff training and accountability
- Physical data security
- Encryption at rest and in transit
- Internal alerts to breaches such as unauthorised data access
- Internal reporting mechanisms

As with all aspects of GDPR compliance, if it isn't documented, it didn't happen. The morning of a data breach is not the time to find that out.



Scenario 2:

THE GATHERING FORMS

Your main website collects and stores the personal and financial data of supporters, gathered via a multiplicity of forms for donation and event registration.

Your marketing department wants to use this data, in combination with web analytics data, to gain insights into supporter behaviour.

REMEMBER

- **Explain clearly and transparently what data is being collected, what it is being aggregated with, and where it is being sent, all of which must be included in your privacy information notices;**
- **Obtain explicit and verifiable consent to collect data for profiling;**
- **Responsibly safeguard any sensitive personal data used in profiling;**
- **Stop processing the data of individuals for profiling when they invoke their rights to do so.**

BEFORE GDPR

The Data Protection Act of 1998 set out eight principles for the use of personal information, the second of which is:

"Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes."

The ICO expanded on this by stating that organisations must be clear from the outset about why you are collecting personal data and what you intend to do with it; and comply with the Act's fair processing requirements – including the duty to give privacy notices to individuals when collecting their personal data.

UNDER GDPR

GDPR's requirements regarding profiling are more granular. It defines profiling as any form of automated processing intended to evaluate certain personal aspects of an individual, such as: performance at work; economic situation; health; personal preferences; reliability; behaviour; location; or movements. When processing personal data for profiling purposes, you must ensure that appropriate safeguards are in place.

IMPLEMENT PRIVACY BY DESIGN

The third broad category for our GDPR compliance process has been the **incorporation of GDPR into our workflows**.

We have discussed GDPR compliance as a function of curating the data you already hold. But what about the new data you will create and collect going forward?

The best way to reduce data protection issues is to reduce the amount of data you have in the first place.

Data minimisation takes many forms, but achieving it from the outset can be accomplished by adopting Privacy by Design (PbD) principles into your workflows.

The PbD framework has existed as a voluntary design principle since the 1990s, but GDPR requires privacy by design and data protection by default.

You will have to develop in accordance with PbD, and you will have to document your PbD process.

The PbD development principles[3] require that privacy should be:

1. Proactive not Reactive; Preventative not Remedial
2. Privacy as the Default Setting
3. Privacy Embedded into Design
4. Full Functionality — Positive-Sum, not Zero-Sum
5. End-to-End Security — Full Lifecycle Protection
6. Visibility and Transparency — Keep it Open
7. Respect for User Privacy — Keep it User-Centric

In practice this will mean creating specific workflows for data minimisation, establishing defined time limits for data retention, and engaging in regular data deletion.

Moving from a culture of "collect it all, keep it all, and share it all" to "collect the minimum, keep less, and share nothing" will be a major culture shift for many digital businesses. And, perhaps, not before time.

[3] Information & Privacy Commissioner of Ontario, Privacy by Design https://www.ipc.on.ca/wp-content/uploads/2013/09/pbd-primer.pdf

WHAT ARE PRIVACY IMPACT ASSESSMENTS?

Just as the PbD principles have certain required steps, **so does the documentation** you must assemble to prove your PbD process.

This is called a Privacy Impact Assessment (PIA). The PIA should be conducted before you have written a single line of code.

Like all your GDPR documentation, your PIA can be requested by your data protection regulator in the event of a consumer concern or data breach. Do not take the process lightly.

Your PIA workflow can be unique to your organisation or project, and it may be helpful to come up with a template suited to your needs. ICO has some suggestions on how to construct yours.

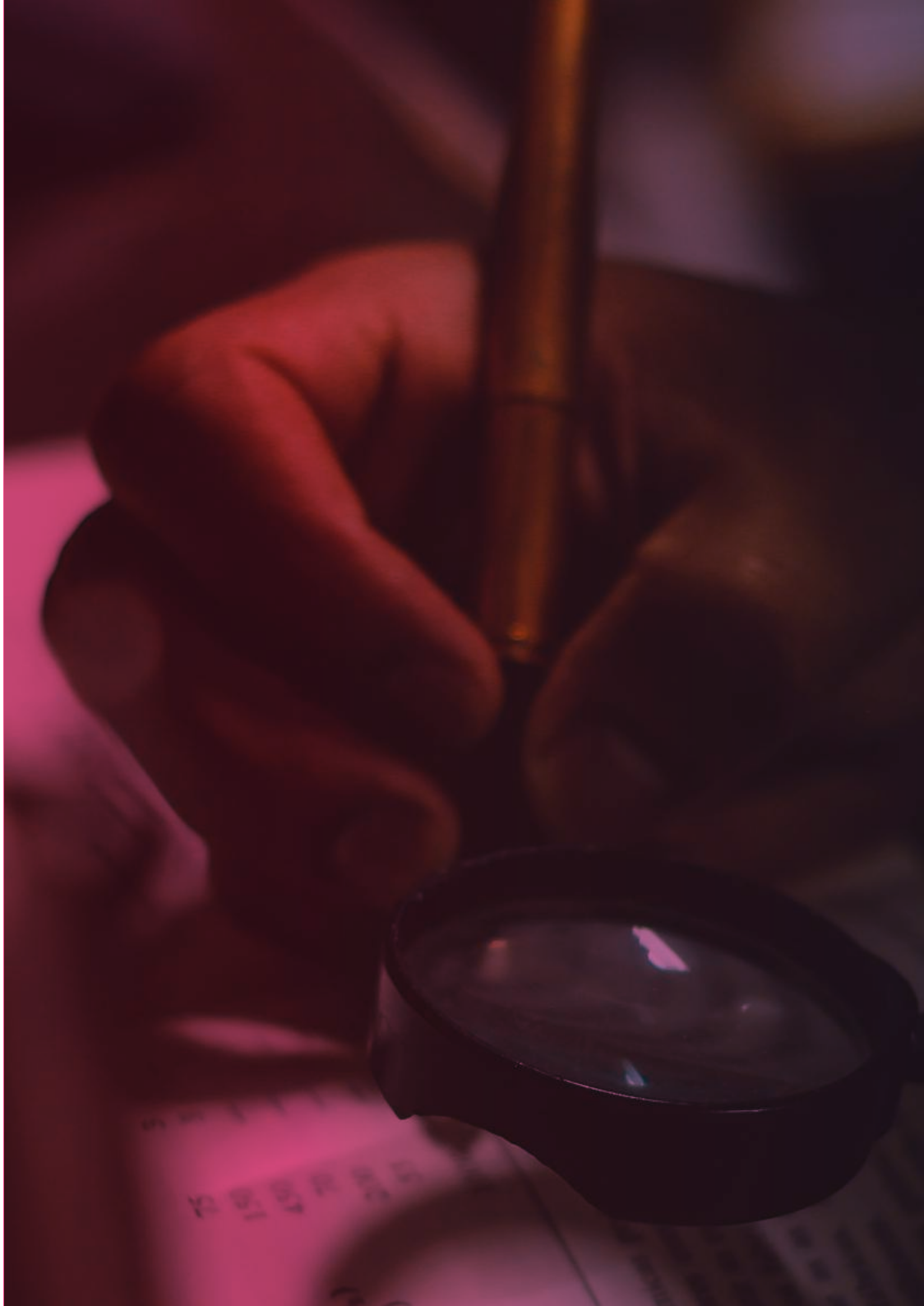
REMEMBER

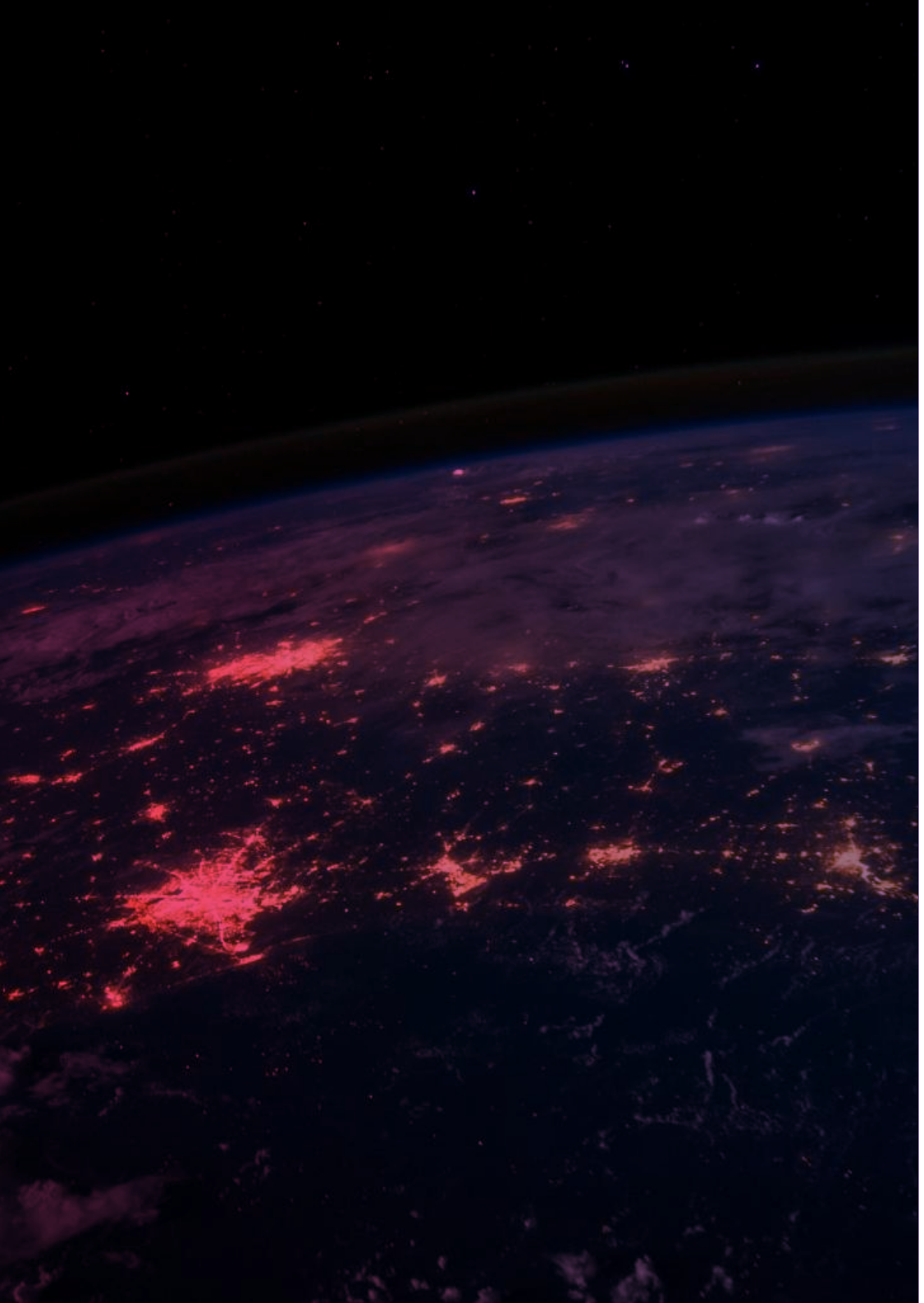
"The PIA should be conducted before you have written a single line of code."

Regardless of how you construct your PIA, the required steps are:

- Identify the need for a PIA;
- Describe the information flows within a project or service (user to service provider, user to user, service provider to user, user to third parties, service provider to third parties);
- Identify the privacy and data protection risks;
- Identify and evaluate the privacy solutions;
- Sign off and record the PIA outcomes;
- Integrate the outcomes into the project plan;
- Consult with internal and external stakeholders as needed throughout the process.

In addition to using PIAs on your new projects going forward, you should run a retroactive PIA on your existing projects, and take any remedial action required.





MOVING DATA OUTSIDE THE EU

Under EU data protection law, **personal data cannot be transferred outside of the EU** to third countries unless those countries can guarantee that they **work to an equal and adequate level of data protection**.

Very few countries do.

If the third country cannot guarantee those standards, companies have a range of legal options for sending data through contracts or intra-company arrangements, such as binding corporate resolutions. These arrangements will require legal advice.

It is also critical for you to ensure that any third party you do business with, whether that is a project partner, ad network, call centre, chat service, file sharing platform or hosting partner backed by AWS, also adheres to EU data protection standards. You should review your contracts and terms of service with them, and make GDPR compliance a required term of business.

You may also wish to review your insurance policies to ensure that you are protected in the event that a non-EU contractor suffers a breach which includes your users' data. We can imagine that many UK clients of the American data broker Equifax are doing so right now.

REMEMBER

It is critical for you to ensure that any third party you do business with, also adheres to EU data protection standards.

Scenario 3:

THE SENSITIVE INFORMATION

Your website features a health risk assessment tool. Users must register before they can use the tool, which involves entering sensitive information about their health. If this information were to be disclosed publicly, it could cause severe distress to the individuals concerned.

REMEMBER

- **The best way to reduce data protection issues is to reduce the amount of data you have in the first place;**
- **Adopting Privacy by Design (PbD) principles into your workflows can help achieve data minimisation;**
- **Be prepared for data breaches;**
- **Document everything!**

BEFORE GDPR

The Data Protection Act's seventh principle, concerning data security:

"Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data."

So, there has been a requirement for some time that sensitive or confidential data like information about individuals' health or finances should be protected and that staff are well-trained and accountable. However, the word 'appropriate' left much room for interpretation.

UNDER GDPR

Under GDPR your data security standards become part of the documented evidence of your compliance. In the event of a data breach, your data protection regulator will expect to see documentation of things like password hashing and salting, data sandboxing, staff training and accountability, encryption and penetration testing.

WHAT ARE THE CONSEQUENCES OF NON-COMPLIANCE?

In the run-up to May 2018 you will hear a lot about the **penalties and fines** that can result from a failure to comply with GDPR.

These warnings, sadly, are becoming more exaggerated by the day. (Funnily enough, the most dire warnings are coming from people trying to sell you a GDPR compliance solution. Responsible data protection professionals have even adopted the hashtag "#GDPRubbish" to showcase the worst of it.)

GDPR does have teeth. There are two levels of fines for data protection breaches or actionable poor practice. Level 1 fines can be imposed for up to €10,000,000 or 2% of a company's global annual turnover, and level 2 fines can be imposed for up to €20,000,000 or 4% of a company's global annual turnover.

However, those who scaremonger over penalties and fines fail to explain how the system works.

Data protection in Europe is regulated through national data protection authorities. In the UK the regulator is the Information Commissioner's Office (ICO). Regulators can only respond to complaints and concerns raised by consumers. Data protection regulators do have an ongoing proactive engagement with the largest and most data-intensive businesses - such as search engines and social media sites - but for the vast majority of organisations, regulatory involvement is strictly reactive.

Data protection regulators are not parking wardens. They do not have a quota of apps to fine every day. Where a consumer issue is raised, or a data breach is identified, regulators work constructively with the business in a clearly defined, transparent, and non-adversarial process. That process prevents the majority of issues from ever reaching a phase where financial penalties are levied.

When fines are imposed - and they very rarely are - they must be "effective, proportionate and dissuasive" to the matter. Fines only tend to be imposed when the organisation in question refuses to cooperate, repeats their mistake, or commits a privacy violation so offensive that a fine is the only option possible.

Those who would frighten you into adopting an expensive solution through threats of catastrophic fines do not understand GDPR at all. Data protection is a positive opportunity, a cultural shift, and a mechanism to do right by your users and customers. It is not a weapon, a threat, or a thing to fear.

Compliance must start from a position of positive trust, not resentment.

REMEMBER

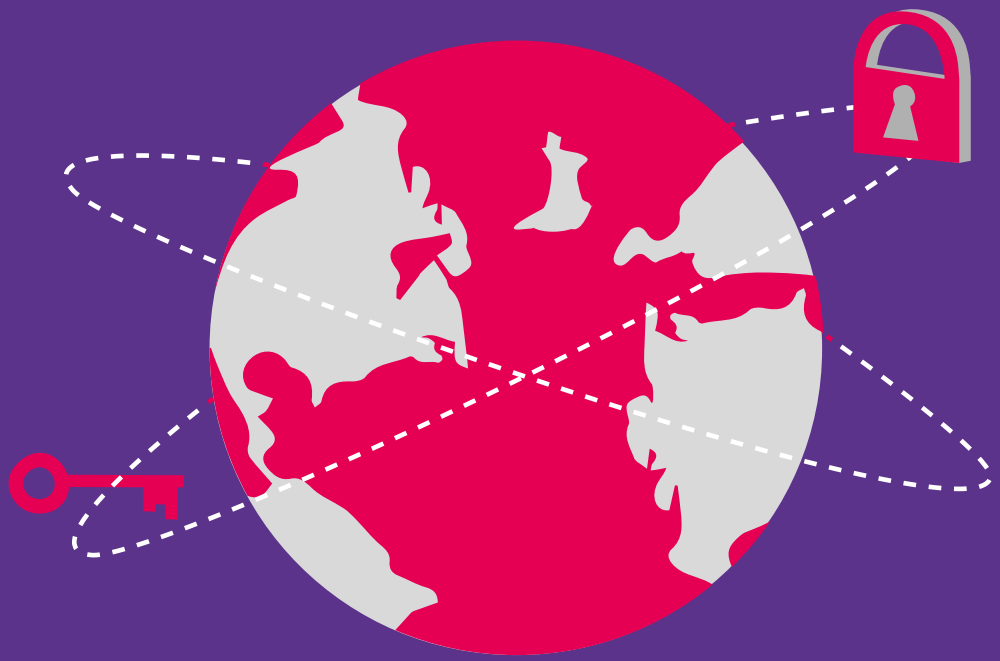
"Those who would frighten you into adopting an expensive solution through threats of catastrophic fines do not understand GDPR at all."

04

RECOMMENDED ACTIONS

We suggest that charities begin their GDPR compliance process with the following actions:

1. Create an inventory of all the data you hold, both online and offline, internal and external, for active projects and dormant ones.
2. Review your privacy information notices across all products and services.
3. Review your consent processes across all projects.
4. Review your Subject Access Request process.
5. Implement any data portability processes which might be required for services you provide.
6. Review any processes concerning data you use or transfer for the purposes of behavioural tracking or marketing.
7. Review your data breach process.
8. Review your data security standards, paying particular attention to
    a. Password hashing and salting
    b. Data sandboxing
    c. Physical data security
    d. Encryption at rest and in transit
9. Review your staff security standards, including training, access levels, and HR documentation.
10. Implement PbD into your workflows for all future projects.
11. Create a PIA template specific to your business's needs.
12. Review contracts with any third parties with whom you give or receive data.
13. Review your legal basis for sending or receiving data outside the EU.



MORE INFORMATION

In the UK

In the lead up to 25 May 2015 the Information Commissioner's Office is publishing helpful, plain-English guidance on many aspects of GDPR compliance.

The ICO also offers free, constructive, non-adversarial advisory visits. ICO staff will visit your office, speak with you and your staff, and identify areas for improvement.

In Europe

The European Commission has published a plain English introduction to GDPR.

Because European member states are permitted to legislate additional data protection requirements over and above GDPR's baseline, it is important that you check with your national data protection regulator for information on your country's GDPR compliance requirements.

Outside the EU

We recommend using ICO's English language guidance for basic compliance information.

For information on specific data protection agreements your countries may have with the European Union, and for a list of regulators and agencies which work with the EU on data protection matters, visit the European Commission's page for countries outside the EU.

MANIFESTO

Manifesto is a multi-award winning agency of creatives and technologists who collaborate with exceptional organisations to change things for the better. We do this by understanding the needs of our clients and their customers, and by developing a shared understanding of how to create value.

We were founded in 2011 by three former colleagues who set out to create the company they wanted to work for. Since then we've assembled a team of creative, passionate, innovative individuals who love working together and with our clients to create ideas, campaigns, products and services that drive positive change.

To find out how Manifesto can help you design and deliver digital products and services that protect the digital rights of users, and improve your data storage and management processes to better comply with GDPR, contact us today.

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