

Funeral director GDPR Webinar – Q&A

General Data Protection Regulation

Question: What is the difference between Data Controllers and Data Processors?

Answer: The Information Commissioner's Office's definition of controllers and processors is:

- A controller determines the purposes and means of processing personal data. For funeral plans that will be the plan provider.
- A processor is responsible for processing personal data on behalf of a controller. For funeral plans that will be the funeral director.
- If you are a processor, the General Data Protection Regulation places specific legal obligations on you; for example, you are required to maintain records of personal data and processing activities. You will have legal liability if you are responsible for a breach.
- However, if you are a controller, you are not relieved of your obligations where a processor is involved – the General Data Protection Regulation places further obligations on you to ensure your contracts with processors comply with the regulation.

Question: What does it cost to register with the Information Commissioner's Office?

Answer: The cost of your Information Commissioner's Office registration depends on your size and turnover. There are three fee levels:

- You'll need to pay £40 if your business:
 - has a turnover of less than £632,000 per financial year; or
 - has fewer than 11 employees
- You'll need to pay £60 if your business:
 - has a turnover less than £36 million per financial year; or
 - has fewer than 251 employees
- You'll need to pay £2,900 if your business:
 - has a turnover of more than £36 million per financial year; or
 - has more than 250 employees

You must tell the Information Commissioner's Office if you think your business should only pay the £40 or £60 fee – the presumption is that all data controllers are eligible to pay the £2,900 fee.

Some organisations only pay £40 regardless of their size and turnover. These are:

- charities;
- small occupational pension schemes; and
- organisations that have been in existence for less than one month.

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Question: Who is going to police the General Data Protection Regulation?

Answer: The Information Commissioner's Office will police the General Data Protection Regulation. Customers are encouraged to complain to the Information Commissioner's Office where they feel their information is not being handled correctly or they have not been able to access their information. This will inform the Information Commissioner's Office of issues in individual companies.

Question: Are nationwide processes being put in place for local authorities (e.g. crematoria)?

Answer: This is not something that we are aware of and we encourage you to discuss this with your local crematoria.

Question: What do ICO and DMA stand for?

Answer: Information Commissioner's Office and Direct Marketing Association.

Question: When does the General Data Protection Regulation come into force?

Answer: 25th May 2018.

Question: Does the General Data Protection Regulation only affect registered companies and attributed associations?

Answer: The General Data Protection Regulation affects anyone/all companies who process personal data belonging EU residents.

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Funeral Director as Data Controller

Question: After a customer has passed away and the funeral is complete, can the funeral director contact the family to invite them to a bereavement service?

Answer: We reached out to the Direct Marketing Association and to our legal advisors for clarification on these types of services. Both the Direct Marketing Association and our legal advisor confirmed that they would deem this to be marketing as the funeral company may be trying to promote its services (whether in brand or promotion), and therefore consent is required.

Question: Can funeral directors use old data to market to customers where no consent has been captured to do so?

Answer: Companies will not be able to contact customers to market to them after 25th May 2018 where no marketing consent (which is in line with the new regulation) has been gained.

Question: Can funeral directors capture customer consent when arranging a funeral?

Answer: Yes.

Question: If funeral directors forward donations on behalf of a client to a charity, can they give the charity the name and address of the person who has requested this thereby confirming that donations have been received?

Answer: If funeral directors are forwarding donations as part of the service agreed with customers, they can forward customer details if this is made clear in the Privacy Policy and the customer has consented to their details being shared.

Question: The annual remembrance service is essentially a marketing tool we use to promote our business. Although we do not promote or sell products, it is marketing nevertheless?

Answer: Yes. The Direct Marketing Association would deem this to be marketing.

Question: Will we be able to contact NOK for marketing purposes?

Answer: If you have gained General Data Protection Regulation compliant consent directly from the NOK you can contact them. If no consent is gained, unfortunately you cannot contact them to market to them.

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Question: Can funeral directors pass customer data to potentially non-compliant third parties where the customer says this is okay (e.g. an individual celebrant)? How would a funeral director know if they are compliant?

Answer: It is the funeral director's responsibility to ensure anyone they are passing customer information to is compliant with the law. You can ask the individual what their process for handling customer personal information is. You should also detail to the third party that the data should be used only for the intended purpose, held securely and destroyed once no longer required.

The DMA has confirmed that funeral directors would not need a data processing agreement for each individual or business that they engage their services.

- 1) The deceased person has no data protection rights as they are not a living individual
- 2) The personal details of the next of kin are passed on to celebrants crematoria and cemeteries on a one time use basis only and only for the limited purpose of organising the service or cremation/burial.

Question: Would it be the celebrant's responsibility to delete the client's information or would it be the responsibility of the funeral director?

Answer: The funeral director should make the celebrant aware that they should not keep the customer data longer than necessary.

Question: If a funeral director holds information on a PC or database, is there a specific malware or virus protector that should be used?

Answer: The General Data Protection Regulation outlines that companies should take appropriate measures to ensure the security of the customer information that they hold. This may vary across different businesses as each business will have a different set up and technology. The Information Commissioner's Office previously provided guidance to allow small businesses to determine what their own requirements were – [A Practical Guide to IT Security](#). The Information Commissioner's Office are currently updating their [guidance on security](#) under the General Data Protection Regulation.

Question: Will funeral directors have to destroy old records?

Answer: The General Data Protection Regulation only applies to living individuals, therefore it depends on what information is held (living NOK, etc.) you may feel that it is reasonable to keep details for:

- *Regular use of archived records for reference purposes at the request of next of kin or a future funeral arranger*

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- *Future requests to exhume the remains of a deceased person, including cremated remains*

You must document your reasons for holding data in your Privacy Policy and Document Retention Policy.

Question: If new clients sign a contract stating that funeral directors keep records archived for reference purposes, would this be acceptable in justifying keeping records?

Answer: If the customer has signed to say they are happy for a funeral director to keep their records indefinitely and for reference purposes, this would be deemed as consent to do so. The funeral director would need to ensure that this is detailed in their Privacy Policy and documented processes.

Question: Can funeral directors use data backup sites such as Dropbox?

Answer: Funeral directors can use various sites to back up data as long as the site has appropriate security measures and is compatible with the General Data Protection Regulation. Individual sites will be able to give you further information on their adherence to the new regulation.

Question: Can funeral directors include a data use policy within their terms of business or terms and conditions?

Answer: A privacy policy should be concise, transparent, intelligible and easily accessible. A privacy notice can be detailed within terms and conditions; however it must be made clear within the document. It should be noted that if a funeral director has a website that the privacy notice should be added to the website.

Question: What happens if a family wants a funeral director to destroy data that we are legally obliged to keep for a specific time period?

Answer: The funeral director has a right to refuse a request to erase data where they must keep the data to comply with a legal obligation. However, the funeral director should consider *WHAT* information needs to be kept as it would be unreasonable to refuse to erase data if all that the funeral director required was a basic invoice and reference number. An example of what you may keep would be records required for tax purposes.

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Question: How would a funeral director record the shredding of paperwork?

Answer: It is important to keep an audit trail of what is deleted and when. A certificate of destruction and document retention policy will assist with ensuring you have an embedded process.

Question: How much information can a funeral director give families of a recently deceased person without breaching the General Data Protection Regulation?

Answer: The General Data Protection Regulation only applies to living individuals, however you may wish to respect the wishes of the deceased and speak only to the plan representative and/or NOK. Once you have established that the customer has passed away you are free to share the customer information with the family. This would be the case for at-need and pre-need funerals. It should be noted that you cannot share plan representative or NOK details.

Question: Will the General Data Protection Regulation affect online tribute pages?

Answer: The General Data Protection Regulation only applies to living individuals, and therefore information on the deceased can be shared online (as long as it does not affect living individuals, e.g. family members). Online tribute pages should contain a privacy notice and cookie policy.

Question: Do I need a data processing contract with the providers that provide my software, call answering service and bookkeeping?

Answer: It would be advisable to cover their data processing obligations within the standard contract that you have with them. However, if you are only engaging their services on a single occasion for a specific purpose this would not be required.

Question: If the celebrant chooses to contact the family after a month or longer time period to check how they are doing, do they need consent from family to this?

Answer: Yes. The celebrant would require consent (or another legal basis) to contact the family for any reason after the contract is complete, i.e. the funeral service has been conducted.

Question: Can I put general terms into a contract with my celebrants to get them to agree to delete data after a set period of time, rather than contact them after each service?

Answer: Yes. It would be advisable that where you have an ongoing relationship with a third party (which could be a celebrant, crematorium, etc.) to include all of the standard conditions you would expect them to adhere to within a contract. This may include a provision that they delete

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all personal data relating to a customer a set period after the service has been conducted. You may wish to review this contract and have it signed annually to ensure it remains relevant.

Question: Can I keep customer details on documents I must retain for another purpose, e.g. HMRC records I must keep for seven years?

Answer: No. You should only retain information as long as is necessary. It is unlikely to be necessary for you to retain customer information for the purposes of a tax return. The plan number and the invoice are likely to be sufficient.

Question: When can I keep NOK details?

Answer: You can keep NOK details for as long as is necessary, but is up to your business to determine what is 'necessary'. A funeral director recently advised the Information Commissioner's Office that it is necessary for them to retain NOK details in case a body is exhumed and they are obligated to notify the family, and the Information Commissioner's Office have agreed that this would be a legitimate reason for retaining NOK details indefinitely. This would be documented in the funeral directors retention policy and privacy policy.