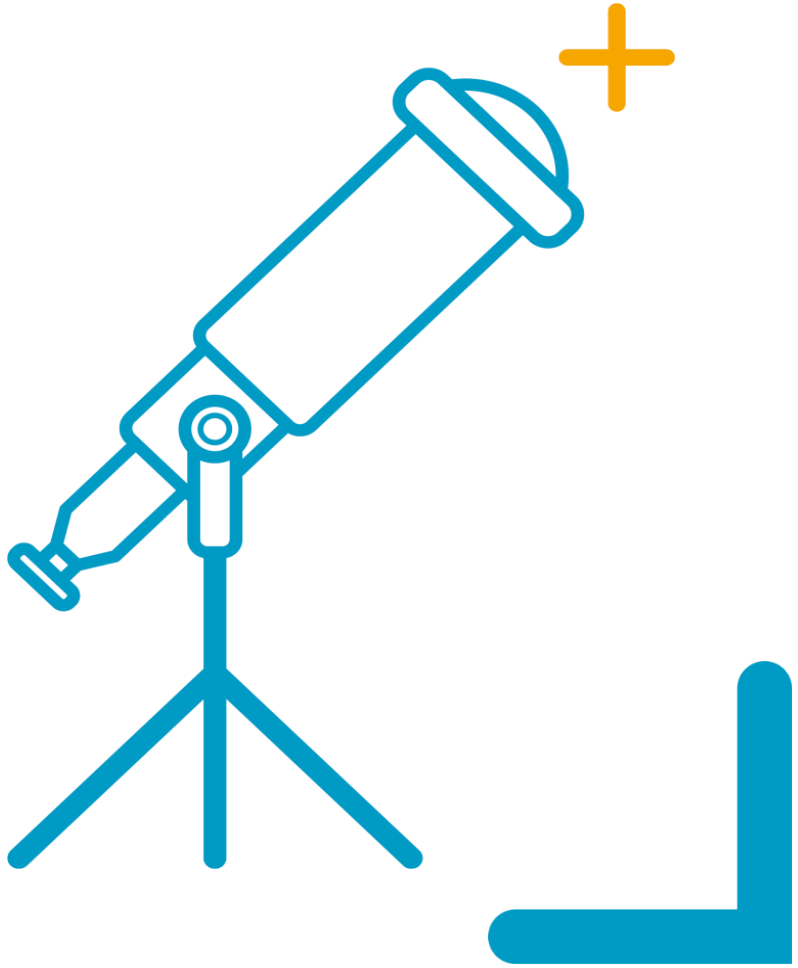
AMNT

GDPR: Key issues and actions for Trustees



Lucy Hughes

Partner

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General Data Protection Regulation - "GDPR"

Why Trustees need to take notice

- **Legal requirement**
- Effective from 25 May 2018
- Replaces existing data protection laws (DPA 1998)
- EU Regulation: does not need to be put into UK law
- Post-Brexit via a new Data Protection Act
- Enable data to be freely transferred between UK and EU
- **Huge fines**
- €20m or 4% of global annual turnover

Who does GDPR apply to?

- Organisations processing personal data within the EU
- Organisations outside the EU that offer goods or services to individuals within the EU

Pension schemes are no exception

- Applies to Data Controllers (eg Trustees, Scheme Actuaries)
- Data Processors (eg Pensions Administration, Investment, Employee Benefits and HR)

What information does GDPR apply to?

It's personal

- **Personal Data:** enables an individual to be identified
- GDPR's definition more detailed eg IP address
- **Special Categories of Personal Data:** "sensitive personal data" under the DPA
- Health, race, religion, political opinions, sexual orientation, genetic and biometric data
- Name of spouse could be deemed sensitive personal data
- Greater restrictions apply to this data

Key changes for Pension Schemes

What actions should Trustees take?

- Record keeping and audit trail
- Registration with the ICO
- Member consent
- Contracts
- Data protection (privacy) notices
- Sanctions and fines
- Data breaches
- Data protection officer
- Rights of individuals

Record keeping and audit trail

Where, why, how and by whom is data processed

- Under GDPR Trustees no longer need to register with ICO
- Greater record keeping requirements
  - Data held
  - Purpose
  - Who disclosed to

ACTION

- Ask processors to create a record of data they hold
- Pensions administrators, advisers, service providers, insurers

Member consent

Confirm lawful basis upon which data is processed

Member consent

- Must be freely given, specified, informed and unambiguous
- Can be withdrawn at any time
- Consider using different legal basis

Compliance with legal obligation

- eg to provide benefits in the scheme rules

Legitimate interest of Trustees

- eg to devise suitable investment strategy

ACTION

Confirm legal basis on which data is processed

Contractual protection

Data processor obligations

- Changes to obligations and liabilities for data processors
- Now similar to data controllers
- Impact third party admin providers
- Some mandatory requirements in data processor contracts

ACTION

- Review contracts with advisers, service providers, insurance companies etc
- Data processor confirm steps taking to comply with GDPR
- Review liability insurance policy

Privacy notices

What information must be given to members?

- Clear and plain language
- Right to more detailed information
- Include
  - legal basis for processing
  - How long data will be held
  - Right to complain to ICO

ACTION

- Review notices
- Agree with admin team how they will be issued

Data breaches

Fines and sanctions

- Was £500,000
- Now **€20m** or **4% of global annual turnover**, if higher
- Not clear how worldwide turnover applies to pension schemes
- Could Trustees reimburse from scheme assets?
- Failure to notify: fines of up to €10m or 2% annual global turnover

NHS

cex

DEBENHAMS

YAHOO!

EQUIFAX

TalkTalk

wonga

Data breaches

Do you know what happens if a breach occurs?

- Notify ICO within 72 hours of discovery where "*breach is likely to result in a risk to the rights and freedoms of individual data subjects*"
- Notify member "*without delay*" if "*high risk to rights and freedoms*"
- Robust breach plan: how you will respond?
- ICO issuing guidance

ACTION

- Put in place clear and robust process
- Maintain a record of any breaches
- Review technological requirements

Data Protection officer

- If local laws require it (new Data Protection Bill)
- If activities involve:
  - Regular and systematic monitoring of data
  - Processing Sensitive Personal Data on a large scale
- Does this apply to Trustees?
- If yes, who will be DPO?
- Can you share DPO with sponsoring employer

ACTION

- Consider whether DPO requirements apply (may want to wait for further guidance)

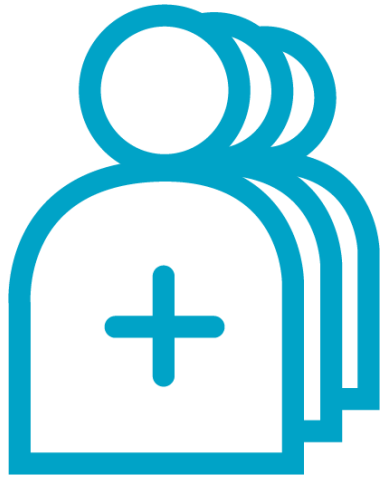
Rights of members

Subject access requests

- Must be provided within one month
- Free of charge (in most cases)
- Include period for which data will be stored
- May occur when complaint has failed

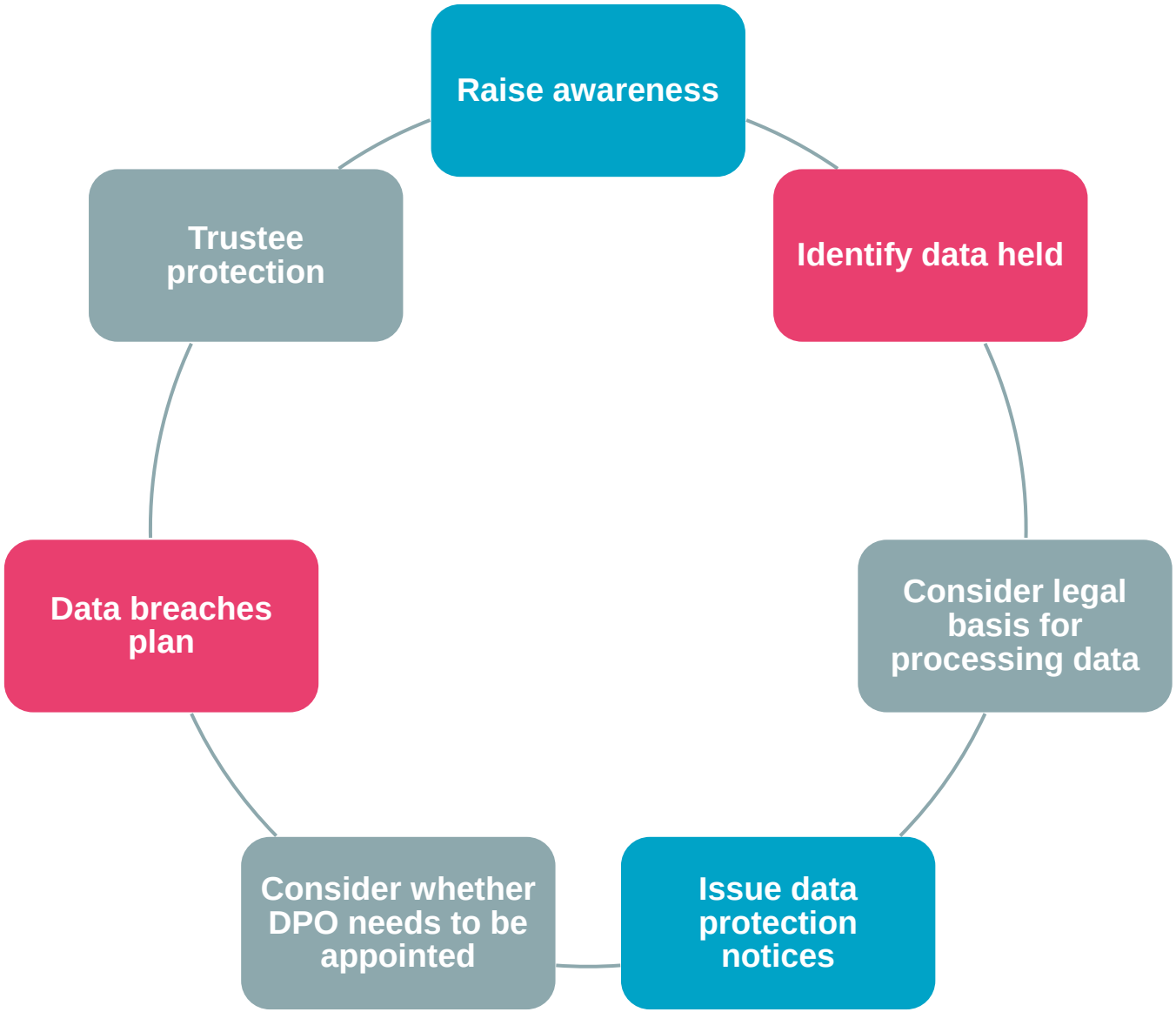
ACTION

- Review and update plan for dealing with SARs



Actions for Trustees to take

Raise this with your committees and boards



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