

Risk Assessment Policy and Procedures - GDPR Amendments

Contact Name and Details	Tim Carter; Safeguarding Adviser; cartert@methodistchurch.org.uk
Action Required	Draft
Resolutions	64/1 The Council receives the Report. 64/2. The Council approves the amendments to the Risk Assessment Policy and Procedures in line with the General Data Protection Regulation (2018).

Summary of Content and Impact

Subject and Aims	Amendments to the current Risk Assessment Policy & Procedures to reflect changes required by the introduction of the General Data Protection Regulation (2018).
Main Points	<ul style="list-style-type: none"> • Amendment of references to data protection terminology and legislation in line with GDPR • Requirement for use of privacy notices
Background Context and Relevant Documents (with function)	Relevant Documents: GDPR Guidance available via the Information Commissioner's website TMCP Guidance relating to GDPR
Consultations	GDPR Project Team District Safeguarding Officers
Impact	<ul style="list-style-type: none"> • Minor additional administration/for those managing risk assessment processes (predominantly district safeguarding officers and Connexional Safeguarding Team) • Increase in confidence and transparency for those participating in risk assessment activity • Potential reduction in non-compliance risk to the Church

Risk Assessment Policy and Procedures - GDPR Amendments

Introduction

The General Data Protection Regulation (GDPR) is a new, Europe-wide law that replaces the Data Protection Act 1998 in the UK. It is part of the wider package of reform to data protection legislation and guidance, which includes the Data Protection Bill, currently passing through parliament. The GDPR sets out requirements for the management of personal data by organisations, which come into force on 25 May 2018.

The Risk Assessment Policy and Procedures enhance transparency and clarity for all parties engaging in such processes. The amendments listed are required to support compliance and awareness in a potentially sensitive and contentious environment. The introduction of a requirement to provide specific information within privacy notices under GDPR is of particular relevance to this policy.

It is noted that the Data Protection Bill is currently passing through Parliament. This will provide further clarity in relation to data protection within UK legislation. Significant amendments relating to the draft bill have been tabled in recent months, which include provision for safeguarding as a lawful basis for processing. However, it will be sometime before the Bill receives royal assent and relevant adjustments can be made to include this legislation.

The arrival of GDPR has been well publicised, increasing awareness of individuals and organisations of rights and duties relating to information management. It is likely that the actions of the Church within the safeguarding arena will come under increasing scrutiny from those who are part of risk assessment processes. It is therefore proposed that interim amendments to the current policy are made to address the requirements of GDPR by May 2018, while acknowledging that further changes may be required when the Data Protection Act comes into force.

The key changes to the procedures are outlined above (Main Points) and the proposed amendments are extracted from the full policy and detailed below.

*****RESOLUTIONS**

64/1. The Council receives the Report.

64/2. The Council approves the amendments to the Risk Assessment Policy and Procedures in line with the General Data Protection Regulation (2018).

Risk Assessment Policy and Procedures – GDPR Amendments

The following sections have been extracted from the current policy with additions and amendments indicated in bold, italicised text)

1.1.1. Required information to be supplied in advance of ~~the risk assessment~~ **any risk assessment activity.**

It should be noted that the majority of concerns and issues, raised by parties involved in a risk assessment process, arise from a failure to inform them of the reason for the assessment, what will be done with their information, how it will be retained or stored or a failure to offer suitable support. ~~An Information Receipt~~ **A *privacy notice must be supplied*** to relevant parties providing information **directly** to any form of risk assessment activity and **also to those about whom information is received**. This is to facilitate compliance with the ~~Data Protection Act 1998~~ ***the General Data Protection Requirement. The privacy notice must be supplied prior to the provision of any information by the individual to the risk assessor.***

Further information relating to GDPR and privacy notices may be found in the Methodist Church Safeguarding Policy, Procedures and Guidance. A standard privacy notice for risk assessments is available via the Methodist Church website (link to be added)

All parties providing information for a risk assessment (including the subject of the assessment) should be given the following information, **in addition to a privacy notice:**

- ~~• That participation in any discussion in relation to the risk assessment is voluntary.~~
- That the content of any discussion with the assessor may form part of the final report and any concerns in relation to disclosure should be raised with the assessor at the time.
- The arrangements and structure which will apply in the risk assessment.
- That a pastoral supporter can be present for any risk assessment conversation or contact with a survivor.
- ~~• They must be informed that a record will be made of any meeting.~~
- ~~• They must be informed that they can request access to a copy of any personal data held by the Connexional Team, District, Circuit or local Church about them via a Subject Access Request under the Data Protection Act 1998.~~
- ~~• That the record of the meeting and any related papers regarding the procedure will be retained under secure conditions by the District Safeguarding Officer and the Connexional Safeguarding Team to ensure any effective management of any risk identified.~~
- ~~• Details should be provided of any other parties who may have access to the records or may hold information in relation to the process.~~
- ~~• That this information may be shared with other parties in order to facilitate the management of any risk identified and will be shared with statutory agencies (including the Disclosure and Barring Service) as required by legislation, statutory guidance or court order.~~
- ~~• That any related papers regarding the procedure will be retained only for such time as required or permitted under applicable Methodist Church policy and current legal requirements.~~
- That the Connexional Safeguarding Team welcomes feedback from those who engage with the risk assessment process and a contact email for the Team should be provided.

The subject of the risk assessment~~Error! Bookmark not defined.~~ **should also be provided with the following information:**

- Participation in any discussion in relation to the risk assessment is voluntary. However, where the subject declines to engage with the risk assessor, the assessment will still be undertaken and measures may be put in place to manage any perceived safeguarding risk. ***Under the General Data Protection Regulation, there is a requirement for clear explanations to be provided as to whether information will be processed by consent or otherwise.***
- Confirmation of the Standing Order under which the assessment is being carried out.
- Any individual who has received a caution or conviction or been investigated in relation to a criminal offence or referred to Children's or Adult Care Services should be made aware that contact **may** be made with relevant statutory agencies. This is in order to assess effectively their individual circumstances and ensure that any arrangements are appropriate and the seriousness of any risk presented addressed.
- Written consent should be sought before making requests for information from statutory agencies and other parties. The subject of the assessment should be clearly informed that if they choose to decline consent, this may impact on the recommendations made by the assessor and the nature of involvement with church activities that is agreed as a result.
- Where a risk is identified towards children or adults who may be vulnerable, the Church has a duty to make contact with statutory agencies to advise them of those concerns (Further guidance is available in the Sharing of Information section of the Methodist Church Safeguarding Policy, Procedure and Guidance document)
- Those who are currently under the supervision of police or probation in relation to a sexual offence following a conviction or caution should be made aware that the relevant officer **will** be contacted and risk information (including the Covenant of Care **Error! Bookmark not defined.**) shared over time.

1.1.2. Risk Report in relation to the Criminal Record Check Process

A District Safeguarding Officer may be requested to undertake a low level risk assessment in support of the blemished criminal record check process which is undertaken by the Connexional Safeguarding Team. This is usually requested when a copy of the criminal record check certificate and an account from the applicant have already been received by Connexional Safeguarding Team. The Risk Report will be requested because one of the following circumstances apply:

- Insufficient information has been provided by the account and certificate to allow the Connexional Safeguarding Team to make an informed clearance decision.
- The issues raised are of a complexity that requires further exploration prior to a decision being made.

The Connexional Safeguarding Caseworker will contact the relevant District Safeguarding Officer, providing them with relevant context in relation to the applicant's case and a framework of specific questions that will help to address the outstanding matters.

The District Safeguarding Officer will liaise with the relevant minister prior to speaking to the applicant to arrange to make contact with the person and to identify whether the applicant has any specific support needs. With the applicant's permission, the minister may attend this meeting as support for the applicant.

Preparing for a district risk assessment or risk report meeting

The DSO should make contact with the subject by letter or email to introduce themselves and make arrangements for meeting. ***A privacy notice should be supplied prior to the***

meeting. Careful consideration should be given to the location of the meeting in order to ensure that the venue is appropriate with reference to the confidential nature of the discussions and a neutral venue for all concerned where possible.

The DSO should identify a suitable person who can accompany them to a risk assessment meeting. The other party may be asked to take notes to allow the risk assessor to focus on the discussion with the subject, these notes should be provided to the assessor at the conclusion of the meeting. The choice of a person to accompany the DSO should take into consideration the confidentiality of the case and the nature of information already known by that person. The subject of the assessment should be made aware that the risk assessor will be accompanied and the reason for this. The risk assessor should clarify if a pastoral supporter will be present to support the subject of the risk assessment. They should also confirm whether the subject has any additional support needs of which the assessor is not already aware and is fit to undertake the interview.

Particular care should be taken where the subject has been suffering from mental and/or physical ill-health and is in receipt of medical care as a result. If there is any concern that the person is not fit to participate fully with the risk assessment process, the assessor should contact the Connexional Safeguarding Caseworker so that further actions can be taken to consider the health and welfare of the subject.

1.1.3. Preparatory Actions Prior to a Connexional Safeguarding Risk Assessment

Following the initial discussions between the Connexional Safeguarding Team caseworker and the District Safeguarding Officer for the relevant district, the DSO will:

- 1) Provide to the caseworker a contact list for those people deemed appropriate and relevant to the case who have given their permission for the assessor to be given their details and are willing to be contacted in the course of the risk assessment.
- 2) Provide written details of any continuing roles and responsibilities or arrangements for engagement in church activities which are in place during the risk assessment.
- 3) Identify a nominated liaison minister. This could be the District Chair or the Circuit Superintendent but may be an alternative person. The liaison minister will provide information to the commissioning teleconference and so must have an awareness of the current circumstances and assist the District Safeguarding Officer in making relevant arrangements.
- 4) Confirm that advisory information has been provided to and read by ministers and others who may be involved in coordinating and implementing the process. This should include the District Chair, Circuit Superintendent and Presbyterian in Pastoral Charge of the local church (where appropriate). Line managers or those providing supervision or ministerial oversight may also require information about the process, dependent on the circumstances.
- 5) Arrange with the liaison minister and Connexional Safeguarding Team Caseworker of an agreed date and time for a preparatory teleconference.
- 6) Confirm with the liaison minister that consideration has been given to who might provide pastoral support to the subject of the assessment, if they decide to request this.

The Connexional Safeguarding Team caseworker will:

- Prepare a letter to be given to the subject at the time of or prior to the briefing visit. **A privacy notice should be included with this letter.** This will give the name of the Connexional Safeguarding Team member facilitating the process and any additional information which is not included in the leaflet describing the process. It will also include a summary of information provided to the risk assessor.

- Make contact with those likely to be spoken to during the course of the assessment in order to introduce the assessor, request their support for the process, confirm preferred contact arrangements and ensure that required information (see earlier section) is provided. This activity may be shared between the liaison minister and District Safeguarding Officer and Caseworker depending on the respective knowledge of the party and contact information already held.

2.37 Commissioning Letter

Following the teleconference and on completion of any additional actions, a letter will be drafted by the Connexional Safeguarding Team Caseworker and sent to the risk assessor, providing the circumstances that require assessment and identifying key areas of risk for consideration. The specific, personal needs of the subject (where known) should also be included in this letter to ensure that from the outset the assessor is aware of and sensitive to their situation and can make appropriate arrangements to support those needs.

A template for this letter is available but this should be used as a guide and the letter should address the issues of each case specifically and in detail, clearly identifying risk areas that should be considered.

Pre-assessment Briefing visit, meeting or teleconference

The District Safeguarding Officer should meet the subject of the assessment to cover the following areas:

- Brief outline of the reasons for the assessment
- Details of the process that will be undertaken
- Provision of the relevant guidance leaflet and a letter from the Connexional Safeguarding Team (this can be done in advance of the briefing, if appropriate).
- ~~Completion of the Information Sharing and Management Protocol~~ **Confirmation of receipt of the privacy notice and provision of an opportunity to raise any queries about data protection arising from that document**
- Identification of any health or welfare issues that are relevant to the person engaging in the assessment. Written permission should be gained to disclose details of any health or welfare issues and if applicable any supporting information to the assessor. This is of particular importance as health information is defined as ~~personal, sensitive~~ **special category** data under the ~~Data Protection Act 1998~~ **General Data Protection Regulation** (see section 3.1.)

The DSO may be accompanied by the liaison minister or may delegate this role to another party who is deemed suitable to carry out this task. If this is delegated, the need for confidentiality in relation to the issues disclosed should be considered carefully and the subject should be made aware that this meeting will be attended by a second person and that a pastoral support may be present too if they wish.

Completion of the risk assessment report

The standard format risk assessment report will be used for all Connexional Safeguarding Risk Assessments but additional information can be added where this is deemed necessary to bring further clarity to the report. The standard risk assessment document is designed to aid the assessor in producing an effective report.



a) An effective risk assessment report should include:

- A chronology
- Clear and concise details of the risks
- The potential impact on the subject and those involved/linked
- Clear and appropriate recommendations
- Concise content written without jargon
- Balanced and fair content
- Differentiation between fact and opinion
- Corroboration of information provided with another source or clear acknowledgement that what is known has been provided solely by the subject of the assessment.
- Clear indication of the source of information

The risk assessment report may include appendices containing specialist advice (where required), a response from a victim or survivor or submission from the District or local church about the circumstances and the potential outcome. This may be in addition to contents of the risk assessment report itself.

b) Judgement and Fact

On occasion, those who take part in risk assessments express concerns about the provision of professional judgements by risk assessors. In many cases, the contentious nature of the situation or divided opinion is the determining factor for its referral for a Connexional Risk Assessment. Risk assessors should not shy away from expressing their opinion but it should always be clearly identified as the professional judgement of the assessor and not be presented as a fact. In addition, the opinion should be based on information that has, as far as is possible, been deemed as factually accurate and up-to-date. Corroboration with another source beyond the information provided by one party, where possible, demonstrates a commitment to ensuring accuracy as the basis of opinion.

In all circumstances, the language used in risk assessments should be considered carefully with a view to minimising the pain and distress of any party who may be represented in that document. The opportunity for the subject to review and submit additional comments to the Safeguarding Panel, addresses the need to consider carefully the factual accuracy of the report and allow for opposing opinions to be provided for fairness and balance. Within the standard risk assessment structure, there is clear direction as to the importance of representing the views of victims and survivors.

The importance of ensuring that risk assessors have the right skills and experience to undertake the role may be critical to the sensitive handling of contentious opinions.

~~However, the following information should be considered in relation to the inclusion of opinion in risk assessment with regard to the requirement of the Data Protection Act 1998 in relation to the inclusion of this form of information.~~

~~“The Data Protection Act does not give individuals the right to demand that you delete an opinion about them from your records because they believe it is based on irrelevant information, or has not taken account of information they think is important. However, the record of an opinion (or of the context it is held in) should contain enough information to enable a reader to interpret it correctly. For example, it should state the date and the author’s name and position. If an opinion is likely to be controversial or very sensitive, or if it will have a significant impact when used or disclosed, it is even more~~

important to state the circumstances or the evidence it is based on. If a record contains an opinion that summarises more detailed records held elsewhere, this should be made clear.”⁴

SECTION 3 INFORMATION SHARING OF RISK ASSESSMENT PROCESS MATERIAL

3.1 ~~THE DATA PROTECTION ACT~~ OBLIGATIONS UNDER THE GENERAL DATA PROTECTION REGULATION (GDPR)

It should be noted that both the risk assessment and summary will contain ‘**personal data**’ and are likely to contain ‘**special category personal data**’ as defined by the **General Data Protection Regulation**. For the purposes of risk assessment, there is a requirement to obtain consent of those people whose data is used within the process (see initial information to be provided). It is legitimate to process such data where the individual wishes to engage with the Church and the risk assessment is carried out in order to do this and protect others already engaging with the Church.

Where ~~sensitive personal~~ **special category** data is concerned, there are additional processing requirements, some of which are likely to be relevant to this process. They include where it is necessary to protect the vital interests of the individual or another person. This may be the case where consent cannot be given or reasonably obtained.

A privacy notice will be supplied to all parties who provide information to a risk assessment and to those about whom information has been received during the course of the risk assessment. This will include information about how information is stored, used and shared, in addition to their rights to raise a complaint and access details held about them.

3.2 WHAT IS PERSONAL DATA?

- Relates to a living individual
- Who can be identified by that data
- This identification could be via indicative circumstances or direct details. It also includes where the data can be identified by using another piece of data held (eg anonymous report with a key)
- It includes the expression of opinion about the person and expression of intentions about them (eg recommendations, outcomes, advice) means data which relate to a living individual who can be identified.

What is ~~sensitive personal~~ special category data?

Information about the person which includes one or more of the following categories:

- Racial or ethnic origin
- Political opinion
- Physical or mental health or condition
- Any proceedings for any offence alleged to have been committed and the outcome of any such investigation or proceedings
- Trade union membership
- Religious beliefs
- **Genetics**
- **Biometrics (where used for ID purposes)**
- **Sexual Orientation**

- Sexual life

Criminal Offence Data

This has now become a separate category of data under GDPR and includes criminal allegations, proceedings or convictions.

3.3 INFORMATION SHARED FOLLOWING A SAFEGUARDING PANEL

Following a Safeguarding or Appeal Panel, outcome letters will be drawn up by the allocated Safeguarding Caseworker for approval by the Panel. The District Chair and District Safeguarding Officer will be consulted prior to the final outcome letters being sent, to ensure the directions and recommendations are in line with local circumstances.

The following documentation will be sent to the listed parties:

- Outcome letter: Subject of assessment, District Chair, DSO, Circuit Superintendent, Monitoring and Support Group Chair and Support Group Members
- Summary section of risk assessment: District Chair, Circuit Superintendent, Monitoring and Support Group Chair and Support Group Members.
- Full risk assessment: District Safeguarding Officer
- Appeal panel decisions: Subject of assessment, District Chair, DSO, Circuit Superintendent

In each case, the Safeguarding Panel will consider information that can be provided to a victim or survivor who has been actively involved in the risk assessment or has requested this information. This will include considerations as to legal requirements, statutory guidance, Methodist Church policy and procedures and consent provided by those involved. The Panel will clearly identify in correspondence the reasons why certain information cannot be provided, if that is the case and any relevant legislation, government guidance or authority on which that decision is based.

The initial briefing prior to the assessment will ensure that all parties engaging in the process are aware of how their information will be processed. All parties will be invited to provide their consent for this and will be made aware of the extent to which information can be shared. Any information or correspondence being sent out by the Safeguarding Panel will be reviewed and approved by the Panel before being sent out.

Each risk assessment contains a summary which includes a guide to the risks identified, details of the circumstances, the conclusions of the risk assessor and the recommendations made in relation to risk assessment. Further guidance will be provided with the standard risk assessment structure document as to what should be included in this section. It is the intention that the summary will contain sufficient information for the management of risk locally.

3.4 FURTHER INFORMATION SUPPLIED VIA THE DISTRICT SAFEGUARDING OFFICER

The full risk assessment report will be held in confidence by the District Safeguarding Officer. The District Safeguarding Officer will carry out a gatekeeping role in relation to the full risk assessment document based on the following considerations:

- There is a need for risk assessment information to be available to support risk management locally to ensure effective measures are put in place and that actions can be taken with due regard to the circumstances of any issue.
- It is intended that for the most part, the summary section of the full risk assessment will address these needs.

- The disclosure of data is subject to legislation and statutory guidance both in general (eg ~~the Data Protection Act 1998~~ **the General Data Protection Regulation**) and specifically within safeguarding environments (eg Working Together to Safeguard Children 2015)
- It is not expected that all those who may need to receive information of a sensitive nature will have received suitable training or have relevant experience as to how, when and if certain information can be disclosed
- The gatekeeping role will allow the District Safeguarding Officer to ensure that those receiving information will have the requisite guidance to manage it and minimise the significant legal risk of breaching such requirements.
- There is a requirement for a record to be kept of why information has been disclosed with reference to key aspects of statutory guidance and legislation.
- The gatekeeping role is most appropriately carried out by the District Safeguarding Officer who is required to have the necessary skills, training and experience to carry out information sharing within a safeguarding environment, as a result of the role for which they have been engaged.

He/she will consider the following issues in each case before responding to any request for any additional information from the full risk assessment to any other party:

- a) Is there a need for disclosure in order to manage an identified current safeguarding risk?
- b) Is there a specific need for that individual to receive or hold that information?
- ~~c) Has any third party information relating to sensitive personal data been redacted where permission has not been provided for that information to be shared by the other party? This could include not only details relating to identity but also aspects of the case that may lead to identification of the individual.~~
- ~~d) Has the subject of the risk assessment provided written permission to disclose the information (usually at the start of the risk assessment process)?~~
- ~~e) Has the party receiving the information received guidance on the safe storage, retention requirements and handling of sensitive personal data?~~
- f) If the risk assessment contains information about employment/disciplinary or complaints processes, has disclosure been agreed with the lay employment adviser (employment) or the Connexional Complaints Worker (complaints and discipline) prior to disclosure? There are legal and organisational requirements in relation to confidentiality of those processes and consultation should be undertaken before disclosing this information.
- g) ~~Has any party identifiable within the information being requested provided their consent for further disclosure?~~ **Are additional privacy notices required for any relevant parties who have provided information to the risk assessment or about whom information has been received? The district safeguarding officer will need to consider whether any additional sharing of information is covered by privacy notices that have already been supplied.**

A note in relation to consideration of the above questions will be added on the relevant case file prior to disclosure. For further information in relation to the provisions of the ~~Data Protection Act 1998~~ the General Data Protection Regulation (GDPR) and Working Together to Safeguard Children 2015 (England & Wales)/Scottish National Guidance on Child Protection 2014, refer to the Methodist Church Safeguarding Policies, Procedures and Guidance document.

Information will be disclosed to any complaints or disciplinary process of the Methodist Church relating to the subject of the assessment in consultation with the Connexional Complaints Worker, other relevant member of Conference Office and the Safeguarding Panel.

3.5 INFORMATION SHARING BEYOND THE PANEL PROCESS

It should be noted that there is a requirement to share information which has been obtained or produced during the risk assessment process in the following circumstances:

1. In response to a Subject Access Request under the ~~Data Protection Act 1998~~ **General Data Protection Regulation (GDPR)** to the Church. This may be initiated by any party and the information relating to them must be provided. Further information may be obtained from the District Safeguarding Officer or the Connexional Safeguarding Team in relation to the Methodist Church Safeguarding Process for Subject Access Requests. There is also a useful guide on related matters on the Trustees for Methodist Church Purposes website.
2. There is a legal requirement to disclose information to statutory agencies (such as Police and Children's Services) where they are undertaking an investigation or there is a court order requiring that to happen the information disclosed must be only that data which is relevant to the investigation. Any material supplied to such agencies could become subject to a Freedom of Information Act request once held by them, so sensitive material that may put someone at risk, if released, should be clearly highlighted and discussed with the relevant officer prior to submission.
3. There is a legal requirement to disclose material to DBS in relation to vetting and barring inquiries (England & Wales) and Disclosure Scotland in relation to the PVG scheme. Due to the considerations above, this material will be redacted prior to submission by the Church. Further assistance should be sought on this matter from the Connexional Safeguarding Team on receipt of such a request.

Further details of relevant procedures relating to information sharing can be found in the Methodist Church Safeguarding Policy, Procedures and Guidance document.