

COVID-19 Data protection – What you need to know

How is the UK regulator, the Information Commissioner's Office ('ICO') responding to COVID-19?

Just as the two-year anniversary of the GDPR coming into force approached on 25 May 2020, the ICO urgently had to review its priorities and reassess its regulatory approach.

ICO enforcement

- On the 16 April 2020, the [ICO published a statement](#) on its regulatory approach during the public health emergency, emphasising its pragmatic and proportionate stance. Whilst affirming the need for the importance of privacy protections, the ICO will enforce with empathy, showing the flexibility that the law allows.
- Focus will be on the most serious challenges and threats. Firm action will be taken against those looking to take advantage of the situation e.g. with nuisance marketing (by those preying on people's fears), or where breaches (and/or the responses to them) are not related to or impacted by the crisis.
- Before issuing fines, the ICO will take into account their economic impact and affordability. In the current circumstances, this is likely to mean the level of fines reduces.
- Following the ICO's notices of intent to issue multi-million pound penalties to large corporations last year, the outcome of the ICO's consideration of those breaches is still awaited. It will be interesting to see how the change in the economic environment impacts those decisions.
- Meanwhile, as new large scale breaches emerge, the ICO has reaffirmed the continued importance of privacy rights and public trust, reiterating the need to investigate and take robust actions where necessary.

ICO reassesses priorities

Subsequently, on 5 May 2020, the ICO issued a [statement](#) of its revised priorities and its envisaged role as, "both an enabler and a protector," focussing on:

- Protecting citizens and businesses during the COVID-19 crisis, particularly frontline workers and any who are especially vulnerable at this time.
- Supporting economic growth and digitalisation by offering practical guidance to enable businesses to grow and offer services in compliance with the law.

- Proportionate surveillance; the ICO will be keeping a close watch on contact tracing, testing, and the implications of any surveillance measures brought in to combat the pandemic's spread.
- Enabling good practice in AI by advising on ways in which privacy considerations can be built into AI, and the way it is employed across the digital economy.
- Encouraging transparency to increase public confidence and engagement in the decisions taken about how personal data is used, and how those decisions affect people's rights.

Meanwhile, the ICO has paused its investigation into real time bidding and the [Adtech industry](#). Concerns remain, but the investigation will be restarted when the time is right.

Contact tracing apps

- The Information Commissioner herself appeared before the parliamentary Joint Human Rights Committee in early May and demonstrated her keenness to support the use of technology in tackling the pandemic, whilst also protecting privacy rights. The ICO is currently reviewing the [Data Protection Impact Assessment](#) relating to the app, and is looking to feedback as soon as possible.

Workplace testing

The [ICO has published guidance](#) on workplace health testing, setting out the legal grounds that may be appropriate for processing the results of such testing and reiterating the need for any such testing to be proportionate and transparent.

How is the UK responding to COVID-19?

The NHS is looking to launch a contact tracing app shortly. Also, the UK government sees the power of data in dealing with the pandemic.

Contact tracing app

- The UK is one of a small number of countries who have, so far, rejected decentralised contact tracing apps in favour of a centralised system. The government's position is that a centralised system will make the app more effective and enable them to better respond to, and combat, the spread of the virus. The app has been undergoing initial field testing on the Isle of Wight.

A platform to centralise disparate NHS data

- The unprecedented challenges of the COVID-19 outbreak have urgently brought to the fore the need for the decision-makers to be able to access real-time data in respect of the spread of the virus and its impact on health and care services.
- The government has announced that it has commissioned a data platform that will centralise a huge amount of disparate NHS data to assist with responding to the pandemic – designed to provide secure, reliable and timely data in a way that protects the privacy of UK citizens.
- All data must remain under the control of the NHS, but government has recognised the benefit of enlisting help and expertise from the private sector in the field of technology, naming (inter alia) Google, Microsoft and Amazon Web Services.
- The government intends to close the COVID-19 data platform when the pandemic abates and the outbreak is contained. The data processing agreements put in place include the steps which need to be taken by the private sector to cease processing and to either destroy or return data.
- The government hopes that valuable lessons will be learned from this [project about data collection](#), aggregation & analysis, and that the NHS can be made more efficient.



How is the EU responding to COVID-19?

EU institutions have been responding speedily to enable the use of tracking and tracing technologies.

Tracking tools

- The European Parliament's Civil Liberties Committee stated that they follow developments closely because of the serious risks that such tools may imply for an individual's fundamental rights to a private life and data protection.
- The European Data Protection Supervisory Board identified, as a priority, the need for guidance on issues relating to data protection and the use of tracking and geolocation tools in the context of the pandemic and issued guidelines on 21 April 2020.
- EU Members States, supported by the Commission, [announced](#) that they have developed an [EU toolbox](#) for the use of mobile applications for contact tracing and warning in response to the pandemic. This is part of a common coordinated approach to support the gradual lifting of confinement measures. The common approach aims to exploit the latest privacy-enhancing technological solutions that enable at-risk individuals to be contacted and, if necessary, to be tested as quickly as possible, regardless of their location and the app they are using.



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KPMG perspective

Times have changed since the GDPR came into force two years ago. Inboxes were being flooded with emails about GDPR and organisations were focussing on embedding their compliance programmes.

It is positive that the UK regulator, the ICO, is responding urgently to the pandemic, affirming the importance of privacy rights and public trust, whilst also being pragmatic and looking to use the flexibility that the law allows in these unprecedented times. Governments and institutions are having to react and deal with this urgent situation, dealing with privacy issues in a matter of days which could, in the normal course, be the subject of debate for months or years.

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