

# COVID-19 Data protection – What you need to know

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

The ICO has urgently taken a pragmatic view and is keen to use the flexibility that the law allows, whilst also recognising the continued importance of privacy rights and public trust.

### 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, reflecting that “A principle underpinning data protection law is that the processing of personal data should be designed to serve mankind.” Whilst affirming the need for the importance of privacy protections, the ICO will enforce with empathy, and 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, 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 a number of large corporations last year and the extension of the regulatory deadlines, the outcome of the ICO’s consideration of the breaches and the parties’ representations is still awaited. It will be interesting to see how the change in the economic environment impacts those decisions.

### Scams during the pandemic

- The [ICO](#) has in recent weeks “seen an increase in complaints about nuisance marketing clearly aimed at preying on people’s fears” and says they are prioritising such cases.
- They “stand ready to investigate any business taking advantage of the current pandemic” and emphasise their powers to fine company directors and their companies under the electronic marketing rules.
- Where they find evidence of fraud, they work closely with other relevant agencies.

### Location data trend analysis

- The ICO confirmed [in a statement](#) dated 28 March 2020 that privacy laws are not breached as long as appropriate safeguards are in place and the data is properly anonymised and aggregated.
- On 24 April 2020, [the ICO stated](#) that they have been working with NHSX on a contact tracing app being developed to tackle the pandemic. They recognise the urgency, the vital role of data and the need to maintain public trust in its use.

## How is the EU responding to COVID-19?

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

### Tracking tools

- Following the ICO’s [statement](#) dated 28 March 2020, there has been much interest at European Union level.
- The European Data Protection Supervisory Board identified, as a priority, the need for guidance on the issues relating to data protection and the [use of tracking and geolocation tools](#) in the context of the pandemic.
- [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.
- EU Member States, supported by the Commission, have [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, as [set out in a Commission Recommendation](#). 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.



## How is the UK responding to COVID-19?

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

### 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.

### Launch of contact tracing app

- NHSX, a joint unit of the government and the NHS (with input from the ICO) has announced that it will launch a contact tracing app in the coming weeks. Users can choose to alert the NHS if they become unwell with symptoms of COVID-19, which can trigger an anonymous alert to other users with whom they have come into contact in the last few days.

## KPMG perspective

It's positive that the UK regulator, the ICO is responding urgently to the crisis, 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, but will not tolerate breaches by those looking to take advantage of the situation.

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.

## Contact



### Isabel Ost

Solicitor (England and Wales)  
Director  
Legal Services, KPMG LLP

**D:** +44 (0)20 7694 3361

**M:** +44 (0)7818 588 789

**E:** isabel.ost@kpmg.co.uk



### Lucy Jenkinson

Solicitor (England and Wales)  
Senior Manager  
Legal Services, KPMG LLP

**D:** +44 (0)131 527 6823

**M:** +44 (0)7825 089 364

**E:** lucy.jenkinson@kpmg.co.uk

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