

Data Protection and the implications of COVID-19.



In May 2020 the ICO issued new guidance relating to Data Protection and the implications of COVID-19. Our data protection experts have analysed this guidance and produced the below advice for UK businesses. To find out more about how the **norm.** lawyer-led DPaaS service can support you, [click here](#).

IMPORTANT NOTE: Although similar, there are variations in approach taken by England, Scotland, Wales and Northern Ireland. Employers should ensure that they comply with the relevant local requirements for each of their premises, including any local differences that may be introduced.

When returning to work, can I carry out tests to check whether staff have symptoms of COVID-19 or the virus itself?

Although data protection law does not prevent you from taking the necessary steps to keep your staff and the public safe, it does require you to be responsible with people's personal data and ensure it is handled with care.

Make sure you clearly understand and follow the lawful basis you can use for testing employees.



*** Yes, even now you still need to comply with the GDPR.**

How can I show that my approach to testing is compliant with data protection law?

If you're going to undertake testing and process health information, you should conduct a data protection impact assessment (DPIA). This should set out:

- * The activity being proposed;
- * The data protection risks;
- * Whether the proposed activity is necessary and proportionate;
- * The mitigating actions that can be put into place to counter risks;
- * A plan or confirmation that mitigation has been effective



*** Use the accountability principle. You are responsible for complying with the GDPR and must be able to demonstrate your compliance; e.g. with additional record keeping.**

How do you ensure that you don't collect too much data?

It's important to only collect and retain a minimum amount of information. In order to not collect too much data, you must ensure that what you do collect is:

Adequate - enough to properly fulfil your stated purpose

Relevant - has a rational link to that purpose, and;

Limited to what is necessary - you do not hold more than you need (e.g. you will probably only require information about the result of a test, rather than additional details about underlying conditions).



*** As an employer, you should be able to demonstrate the reason for testing individuals and/or obtaining test results.**

Can I keep a list of employees who either have symptoms or have tested positive?

Yes, but you should ensure that the data is secure and consider any duty of confidentiality owed to your employees.

It would also not be fair to use or retain information you have collected about the number of staff who have reported symptoms of COVID-19 for purposes they would not reasonably expect.



*** You still have a legal duty to maintain employee data confidentiality.**

What do I need to tell staff?

If you are testing employees for COVID-19 or checking for symptoms, you should be clear about what decisions you will make with that information.

You should have clear and accessible privacy information (via a privacy notice policy) in place before any health data processing commences.

Before carrying out any tests, you should at least let your staff know what personal data is required, what it will be used for and who you will share it with.

You should also let them know how long you intend to keep the data for.



*** Be clear, open and honest with employees from the start about how and why you wish to use their personal data.**

Some staff already have the results of tests that they've arranged for themselves. If they disclose these results to us, what are the data protection considerations?

You will be 'processing' personal data and so will need to comply with the GDPR (in the same way as you would for any other 'special category' personal data).

This means, in particular, taking appropriate security measures.



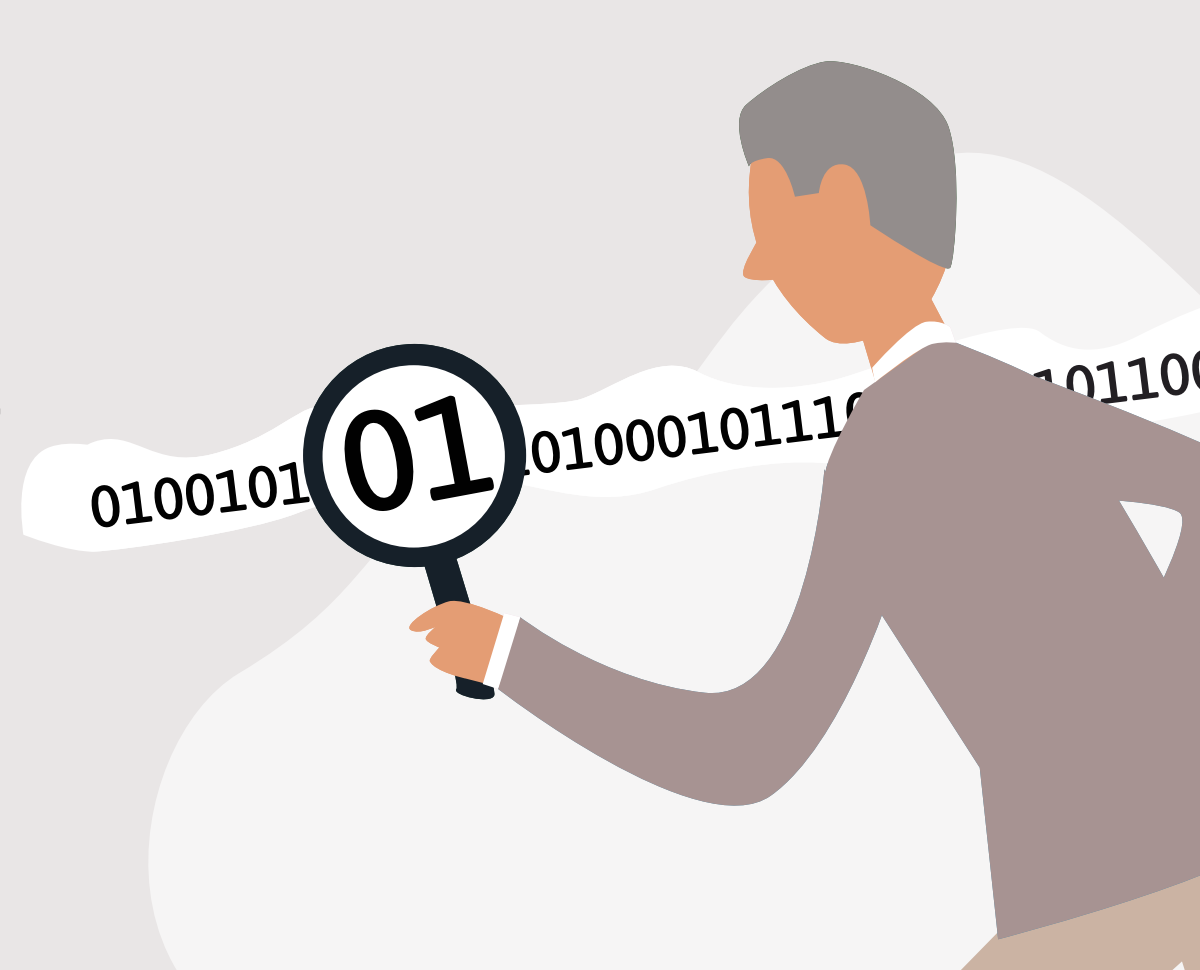
*** You still need to comply with the GDPR as you are still processing personal data.**

Would it be appropriate to use temperature checks or thermal cameras on-site, as part of testing or ongoing monitoring of staff?

When considering the use of more intrusive technologies, especially for capturing health information, you need to give specific thought to the purpose and context of its use and be able to make the case for using it.

Any monitoring of employees needs to be necessary and proportionate, and in keeping with their reasonable expectations.

You should consider whether you can achieve the same results through other, less privacy intrusive means. If so, monitoring may not be considered to be proportionate.



*** Any monitoring of employees needs to be necessary, proportionate and in keeping with reasonable expectations.**



Rest assured, the **norm.** lawyer-led DPaaS team can offer advice and expertise to help you safely navigate your return to work. To find out more about the ICO guidance, [click here](#).

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*Drama free data protection.