

The Information Commissioner's Office (ICO)
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Consultation Response

Which? response to the Information Commissioner's Office (ICO) [call for views](#) on regulating online advertising.

Submission date: 05/09/2025

Summary

Which? welcomes this opportunity to respond to the [ICO's proposal to introduce a risk-based approach to enforcing PECR](#), allowing publishers to deliver online advertising to users who have not granted consent where there is a low risk to their privacy¹.

In our response, we argue for:

Better and more effective enforcement of PECR:

- **We want people to have a better experience of online tracking technologies.** Our research shows that consumer acceptability of data collection is also dependent on the collection process - and so informed consent should recognise the process used to collect data for targeted advertising, and not just whether the advertising is targeted.²
- **We want to see more effective enforcement, not less enforcement.** One of the stated aims of the ICO's [Online Tracking Strategy 2025](#) is that 'organisations are not disadvantaged by following the rules and improving their approach to online tracking to ensure it is compliant.'³ We believe that the best way for the ICO to ensure fairness for organisations is to enforce more effectively and more consistently - not to enforce less.
- **We want clarity on the scope and criteria of proposed 'low risk' uses of unconsented data.** The ICO proposals do not have a clear statement of what is 'low risk' or how the criteria would be determined.

¹ ICO (2025), *ICO call for views on our approach to regulating online advertising*. Available at: <https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/2025/07/ico-call-for-views-on-our-approach-to-regulating-online-advertising/>

² Which? (2020), *Are you following me? Consumer attitudes towards data collection methods for targeted advertising*. Available at: <https://www.which.co.uk/policy-and-insight/article/are-you-following-me-alBbn7F3C7RD>

³ Ibid

- **We want the ICO's process around possible changes to PECR enforcement to be transparent, inclusive and consultative.** We strongly urge that the ICO's planned statement for early 2026 should be published as a draft, and that the ICO consults on any changes it might make to the secondary legislation. We also strongly urge the ICO to publish in full the findings of the user research it has commissioned as soon as it is available, and at the latest by the time of the proposed statement.

Better and more effective safeguarding and empowering of people:

- **We believe the ICO's proposals don't do enough to safeguard or empower people.** One of the two strategic objectives of the ICO's [Online Tracking Strategy 2025](#) is 'safeguarding and empowering people'⁴. We are concerned that the ICO's proposals include no measures for empowering people, and may instead reduce existing safeguards.
- **We want people's agency over their privacy to be upheld, not weakened.** The ICO's [Online Tracking Strategy 2025](#) identifies four areas where people are not being given the control they are entitled to under data protection law: deceptive or absent choice; uninformed choice; undermined choice; irrevocable choice.⁵ These are not addressed in the ICO's proposals. We are concerned that introducing a category of 'low risk' unconsented data use will further erode the extent to which people feel informed about their data rights or able to exercise them.
- **We believe the ICO's characterization of vulnerable positions is inadequate.** A person does not have a fixed or static relationship to vulnerability; and online tracking of a person might subsequently become data about someone in a vulnerable position.
- **We believe the ICO's approach towards privacy harm is inadequate.** The ICO's proposals don't make it clear how people can ensure that they are not tracked online, whether or not they are in a vulnerable position. We are also concerned that in a regime where unconsented online tracking is normalised unless there is risk of discrimination, people who proactively reject online tracking might be inferred to be in a vulnerable position, and so might experience discrimination anyway.

Full response

[Cookies](#) are a common online tracking technology that are downloaded from a website onto a user's device when the user visits that website⁶. In the UK, the relevant regulations that govern online tracking are the [Privacy and Electronic Communications Regulations \(PECR\)](#)⁷.

⁴ICO (2025), *Online Tracking Strategy*. Available at: <https://ico.org.uk/about-the-ico/our-information/our-strategies-and-plans/online-tracking-strategy-1/>

⁵ Ibid

⁶ ICO, *Cookies and similar technologies*. Available at: <https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guide-to-pecr/cookies-and-similar-technologies/>

⁷ ICO, *What are PECR?* Available at: <https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guide-to-pecr/what-are-pecr/>

The ICO's [guidance on the use of storage and access technologies](#) notes that **online advertising can be targeted in different ways**: contextual advertising is usually based on the content of the webpage being viewed; and behavioural advertising is usually based on a user's known or inferred interests.⁸ Contextual advertising might involve personal data processing but the ICO considers it is likely to be less extensive than behavioural advertising, and so potentially more readily compliant with PECR and UK GDPR.

Online advertising typically relies on the tracking of a wide range of people's activity online, enabling the creation of profiles of website visitors. These insights might relate to sensitive areas of people's lives. [The ICO's Online Tracking Strategy 2025](#) notes that 60% of the cookie-related complaints they received in 2024 related to people not being given the option to reject non-essential tracking⁹. The ICO also observes that people in vulnerable positions may adjust their online activity to avoid risks of their personal information being disclosed through cookies.

[The ICO is now inviting views](#) on how publishers could deliver privacy-preserving advertising to users who have not given consent, where they consider the risks to be demonstrably low.¹⁰ They are considering whether a risk-based approach to enforcing PECR could allow publishers to deliver online advertising to users who have not granted consent, where the ICO considers there is a low risk to their privacy. The regulator will continue to enforce consent requirements for the collection of personal information for targeted advertising.

Q7: How significant are the changes in ICO regulatory posture towards PECR regulation 6 consent requirements that would be required to enable delivery of a commercially viable advertising model?

We believe the ICO's proposals don't do enough to safeguard or empower people.

One of the two strategic objectives of [the ICO's Online Tracking Strategy 2025](#) is 'safeguarding and empowering people'. We are concerned that [the ICO's proposals to introduce a risk-based approach to enforcing PECR](#) include no measures for empowering people, and may instead reduce safeguards.

We want to see more effective enforcement, not less enforcement. The ICO's [Online Tracking Strategy 2025](#) observes that 60% of the cookie-related complaints they received in 2024 related to people not being given the option to reject non-essential tracking, and observes that 'this is unfair to users of online services and organisations that are acting responsibly, who should expect a level playing field'¹¹.

⁸ ICO (2025), *Guidance on the use of storage and access technologies*. Available at: <https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guidance-on-the-use-of-storage-and-access-technologies/how-do-the-rules-apply-to-online-advertising/>

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

One of the stated aims of the strategy is that 'organisations are not disadvantaged by following the rules and improving their approach to online tracking to ensure it is compliant.'¹² We are concerned that the ICO's proposed approach to ensuring a level playing field is to weaken enforcement, effectively rewarding the organisations that are not already acting responsibly. We believe that the best way for the ICO to ensure fairness for users and for organisations is to enforce more effectively and more consistently - not to enforce less.

One of the stated mechanisms of the strategy is for the ICO to '[engage] with industry to shape a more compliant and privacy-oriented system'. We are concerned that the proposed approach to strengthening compliance depends on weakening existing consent requirements (therefore potentially a reduction in data privacy rights for consumers), and this will increase the privacy harms that already constitute 60% of the cookie-related complaints that the ICO received prior to these proposals.

We want clarity on the scope and criteria of proposed 'low risk' uses of unconsented data. The [ICO proposes introducing a concept of 'low risk' uses of unconsented data](#) as a contrast to targeted advertising using personal data. However the proposals do not have a clear statement of what is 'low risk' or how the criteria would be determined. The proposals also do not include a clear statement about whether 'low risk' uses include personal data or special category data.

We want the ICO's process around possible changes to PECR enforcement to be transparent, inclusive and consultative. The [ICO's proposal document indicates they expect to publish a statement in early 2026](#) identifying advertising activities that are unlikely to trigger enforcement action under PECR, and safeguards they are considering to reduce risks to users. We strongly urge that this statement should be published as a draft, and that the ICO consults on any changes it might make to the secondary legislation. The proposal document also indicates that the ICO has commissioned user research to understand people's expectations on online advertising and consent. We strongly urge the ICO to publish the research findings in full as soon as they are available, and at the latest by the time of its proposed 2026 statement.

Q8: How far do you agree that the approach outlined in our call for views can identify commercially viable solutions that can also safeguard people's privacy and improve user experience?

We want people's agency over their privacy to be upheld, not weakened. The ICO's [Online Tracking Strategy 2025](#) identifies four areas where people are not being given the control they are entitled to under data protection law:

- deceptive or absent choice
- uninformed choice
- undermined choice
- irrevocable choice

¹² Ibid

But [the ICO's proposals for moving to a risk-based approach to enforcing PECR](#) does not acknowledge these problems or explain how they will be addressed.

A common theme of these problem areas is the extent to which people feel informed about their data rights or empowered to exercise them. We are concerned that introducing a category of 'low risk' unconsented data use will further erode the extent to which people feel informed about their data rights or able to exercise them.

Our research has found that [people want meaningful control over their data, but feel powerless to engage with organisations who collect and use their data](#) because of the power imbalance between consumers and organisations.¹³ We are concerned that the ICO's proposals will amplify this power asymmetry, and result in people feeling more disempowered.

We want people to have a better experience of online tracking technologies. Over the past two and a half years our [Consumer Insight Tracker](#) (a monthly poll weighted to be demographically representative of the national population¹⁴) has consistently shown that [the majority of consumers](#) (between 60-65%) are worried about how data about them is collected and used by businesses.¹⁵

Research on user privacy online has tended to focus on consumer control over what data is collected and how it is used. However, [our research shows that consumer acceptability of data collection is also dependent on the collection process](#) - and so informed consent should recognise the process used to collect data for targeted advertising, and not just whether the advertising is targeted.¹⁶

Q10: Would you anticipate any of the following negative impacts if any of the capabilities referenced were permitted without PECR consent in circumstances where the ICO considers them to be low risk to people?

We believe the ICO's characterization of vulnerable positions is inadequate. The ICO's [Online Tracking Strategy 2025](#) recognises risks to 'people in vulnerable positions', which it characterizes as being at risk of 'discrimination and other harms [including distress]'. But the

¹³ Which? (2018), *Control, Alt or Delete? Consumer research on attitudes to data collection and use*. Available at:

<https://www.which.co.uk/policy-and-insight/article/control-alt-or-delete-consumer-research-on-attitudes-to-data-collection-and-use-aTS7R0Z87A12>

¹⁴ Which? (2024). *About the Consumer Insight tracker*. Available at:

<https://www.which.co.uk/policy-and-insight/article/about-the-consumer-insight-tracker-asxTG8k9XrQW>

¹⁵ The survey question is: 'How worried are you, if at all, about how data about you is collected and used by businesses? Very worried, Fairly worried, Not very worried, Not at all worried, Not applicable, Don't know.' The proportion of consumers worried is calculated by adding the proportion of respondents that are Very worried or Fairly worried. Which? (2024), *Consumer worries dashboard*. Available at:

<https://www.which.co.uk/policy-and-insight/article/consumer-worries-dashboard-akJMn5c4FKMv>

¹⁶ Which? (2020), *Are you following me? Consumer attitudes towards data collection methods for targeted advertising*. Available at:

<https://www.which.co.uk/policy-and-insight/article/are-you-following-me-a1Bbn7F3C7RD>

Competition and Markets Authority (CMA) notes that [positions of vulnerability are not binary](#)¹⁷; and the UK Regulators Network (UKRN) notes that [positions of vulnerability can be contextual and can change over time](#).¹⁸ This means that a person does not have a fixed or static relationship to vulnerability; and online tracking of a person might subsequently become data about someone in a vulnerable position.

We believe the ICO's approach towards privacy harm is inadequate. The ICO's proposals don't make it clear how people can ensure that they are not tracked online, whether or not they are in a vulnerable position. [Privacy is a universal human right](#)¹⁹, and data protection regimes engage with this right. We are also concerned that in a regime where unconsented online tracking is normalised unless there is risk of discrimination, people who proactively reject online tracking might be inferred to be in a vulnerable position, and so might experience discrimination anyway.

About Which?

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that works with politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

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¹⁷ CMA (2019), *Consumer vulnerability: challenges and potential solutions*. Available at: <https://www.gov.uk/government/publications/consumer-vulnerability-challenges-and-potential-solutions/consumer-vulnerability-challenges-and-potential-solutions#what-is-consumer-vulnerability>

¹⁸ UKRN/Britain Thinks (2020), *Literature Review on Identifying Vulnerable Consumers*. Available at: <https://ukrn.org.uk/publications/ukrn-britain-thinks-literature-review-on-identifying-vulnerable-consumers/>

¹⁹ Human Rights Act 1998; Schedule 1, Part 1, Article 8. Available at: <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/1/chapter/7>