

## DLG response on Call for views on “consent or pay” business models

The ‘consent or pay model’ raises questions as to how GDPR compliant consent can be obtained, particularly how consent can be freely given. There will also be challenges as to how users can be fully informed as to the consequences of their actions and what cookies they will be ‘agreeing’ to have set on their devices. The risk of harm to vulnerable customers requires careful consideration.

### Freely Given and Fully Informed Consent:

If individuals feel compelled to consent to personalised advertising, then consent is unlikely to fall under the definition of being freely given. The user is forced to acquiesce to cookies or make a payment to the organisation if they wish to utilise the service provided. This could cause potential harm to users depending upon the service provided. For example, it would not be a good consumer experience if they have to consent or pay when visiting websites which provide ‘essential’ services for modern life such as banking; energy; medical services. For users, there is little choice as to whether they use the websites (consumers are being directed to go online first) and a consent/pay model will not lead to freely given consent, as the user has no real choice in (1) using the website and (2) agreeing to pay/consent.

Organisations will also need to consider how the consent will be withdrawn. Furthermore, individuals may have limited awareness or understanding of their rights regarding data protection. People might not know what data will be collected and who this data will be shared with. It is unclear how organisations would be able to change the cookies they deploy and whether fresh consent would be required for every new cookie introduced.

### Potential Negative Impact:

The ‘consent or pay model’ can have a negative impact on people with low income or vulnerable customers/users. For example, if individuals with low income cannot afford to pay for access to the service without personalised advertising, they may feel pressured to consent to data processing in exchange of free access.

We agree with ICO’s emerging thinking that there may also be the case that paid services are significantly different from free/add funded service. The paid service can offer additional features or benefits that other individuals may feel excluded from.

Organisations should be clear from the outset on what type of advertising will be shown to people who want to access the service for free. Organisations will also need to be transparent about what decisions will be made based on the data collected in the add free service. There is a risk of individual profiling for users who do not wish to pay. Individuals who do not wish to pay may become susceptible to manipulative behaviour advertising such as gambling adverts.

Advertisements can also be intrusive, cause nuisance and have a nudging behaviour that might impact users who decide to use the service for free.

Consent or pay model may be more applicable to large online advertising and social media companies for now, however consent or pay model can have significant negative impact if it is applied/used in other industries such as recruitment, NHS or motor insurance etc. It is difficult to see how a consent or pay model could be approved for one sector e.g. social media, but not be available to use of other sectors where the risk of harm can be higher e.g. financial services or health services. It is likely that consent or pay models will be challenged in courts and with regulators.

In summary, consent or pay model cannot fall under the definition of freely given. Consent or pay model is also forcing users to provide additional data to the organisation hosting the website to either set up an account to manage their consent/pay preferences.