QUESTION 03 · LEGAL & COMPLIANCE · UK

Can your agency use AI to screen CVs without breaking UK GDPR?

What the February 2026 rule change and the ICO's March 2026 recruitment report mean for agencies using screening, ranking and filtering tools.

THE SHORT ANSWER

Yes, but probably not the way many agencies are doing it now.

Since 5 February 2026, UK law allows solely automated decisions about candidates on more lawful bases, as long as safeguards are in place. The ICO's finding is that many organisations using screening tools are already making automated decisions without realising it, and without those safeguards.

01 What changed on 5 February 2026

The Data (Use and Access) Act 2025 replaced Article 22 of the UK GDPR with new Articles 22A to 22D. The ICO describes the shift as moving from a prohibition with exceptions to a right of challenge with safeguards.

- **"Solely automated"** means no meaningful human involvement in the decision.
- **Special category data**, such as health or ethnicity, is still treated far more strictly in automated decisions.
- **The new "recognised legitimate interests" basis** can't be used for automated decision-making, according to the ICO's draft guidance.

02 The trap: ”decision support” that isn’t

The ICO's *Recruitment Rewired* report (31 March 2026) drew on evidence from more than 30 employers between March 2025 and January 2026. Most described their tools as decision support. The evidence suggested that, in practice, there was often no meaningful human involvement.

> The test: can a person genuinely change the outcome, with the authority, discretion and competence to do so? If a consultant only rubber-stamps what the tool decided, the decision counts as solely automated.

Continued on page 07: your two options, where it bites in agency workflows, and who owes the safeguards.

03 Your two options

OPTION A

Make human review real

A trained person meaningfully reviews every decision about every candidate. That's a high bar when applications run into the hundreds.

OPTION B

Accept it's automated, and add the safeguards

- A lawful basis for the processing
- Clear information for candidates, not a line in a privacy notice
- A way to make representations, ask for human review and contest
- Fairness and bias testing, before and after rollout
- A specific, complete DPIA

04 Where it bites in agency workflows

Use of AI	Typical risk	What to check
CV summarising	Lower	Accuracy, and that a consultant still reads and decides
Skills matching	Depends	What data it uses, and whether unmatched candidates are ever seen
Ranking and scoring	Higher	Whether a low score means no person ever looks
Knock-outs and auto-rejection	Higher	Likely a solely automated decision: safeguards needed

Our general reading of the rules. The real answer depends on how each tool is set up and used.

05 Agency or client: who owes the safeguards?

Agencies sit between candidate and client. Whether you or your client decides how screening works affects who is responsible for transparency, challenges and the DPIA. Check your contracts and agree it in writing before you switch on automated screening for a client.

06 Five questions for your supplier

1. Can it reject or exclude candidates without a person reviewing them?
2. What candidate data does it use? Could any be special category data?
3. What bias and accuracy testing has been done? Can we see it?
4. How are candidates told, and how can they challenge a decision?
5. What does it log, so we can explain a decision later?

THE TAKEAWAY

AI screening isn't the risk. Not knowing that your tool is making the decision is.