ICO Consultation: data sharing code of practice

Company name:

Direct Marketing Association UK Limited (DMA)

About the DMA:

The DMA is the trade body for the data and marketing industry. We represent over 1,000 organisations – encompassing brands, agencies and marketing service companies. We produce guidance on the buying and selling of data that is widely used by DMA members. We have large data companies in DMA membership, such as Experian, Acxiom and CACI.

Please visit our website www.dma.org.uk for more information about us.

Introduction:

The DMA welcomes the opportunity to respond to this consultation issued by the ICO.

Consultation questions:

Question 1: We intend to revise the code to address the impact of changes in data protection legislation, where these changes are relevant to data sharing. What changes to the data protection legislation do you think we should focus on when updating the code?

The most important change in data protection law was the General Data Protection Regulation (GDPR), which was implemented in the UK along with the various derogations via the Data Protection Act 2018 (DPA 18). These laws provide the framework for how businesses process personal data, which includes data sharing.

Questions 2 and 3: Apart from recent changes to data protection legislation, are there other developments that are having an impact on your organisation's data sharing practice that you would like us to address in the updated code?

Yes, the ICO should also take account of industry best practice and advice concerning data sharing. Many organisations will be using industry guidance currently and it is important that they receive consistent messages. If guidance and advice are confused or in some cases contradictory then organisations will struggle to achieve both compliance with the law and conformity to best practice.

The DMA has created a document, which has been shared with the ICO that defines the uses of third party data by marketers and what the legal basis for the processing could be. The document has been created working with the UK's leading third party data companies, such as Experian, Acxiom and the Read Group. The data sharing code of practice should make reference to this document and ensure that there is a consistency in the advice that marketers receive.

Direct Marketing Association (UK) Ltd, DMA House, 70 Margaret Street, London W1W 8SS

t 020 7291 3300 **f** 020 7291 3301 **e** dma@dma.org.uk **w** www.dma.org.uk

The Direct Marketing Association (UK) Ltd is a company limited by Guarantee. Registered in England No. 2667995. Registered office as above

Questions 4 and 5: Does the 2011 data sharing code of practice strike the right balance between recognising the benefits of sharing personal data and the need to protect it? Please give details.

Yes.

The Information Commissioner's foreword explains that data sharing plays a crucial role in helping businesses to provide a more efficient and quality service for their customers. This is especially true from a marketing perspective, where data sharing takes place so businesses can gain new insights into their customers. This allows for more efficient marketing techniques. If marketers understand more about their customers then they can target their messages.

The code of practice is comprehensive and, therefore, very helpful for the many sectors of the economy involved in data sharing of some sort. The revised code of conduct should also acknowledge the valuable role that data sharing plays in the UK economy, while at the same time recognising that safeguards need to be put in place.

Question 8: What types of data sharing (eg systematic, routine sharing or exceptional, ad hoc requests) are not covered in enough detail in the 2011 code?

The 2011 code did not have enough marketing related examples. Given that marketing is one of the largest data-driven industries, it is important to issue guidance that reflects this. The greater use of marketing case studies would give clarity about what marketers are able to do in terms of data sharing.

The DMA has sent a guidance document to the ICO, which is currently being reviewed, concerning the use of third party data for marketing under GDPR. This document includes many examples and would be a useful addition to the data sharing code of practice. The new code could reference this document and incorporate some of the examples.

Question 10: Please provide details of any case studies or data sharing scenarios that you would like to see included in the updated code?

The new code of practice should include more case studies and examples relevant to marketing and advertising. Marketing departments may share information with other organisations or use the services of third party data providers who share data with them.

For example, marketers want to understand their customers and have a comprehensive picture of how their business interacts with a customer. A brand may hold data on its customers but in different databases in various parts of the business. At the same time, a consumer could have several ways that they identify themselves, current or historic or interact with the brand – and this can include name at an old address, several email addresses, aliases or a name with just a digital identity.

Third party data companies are able to join these different data sources together to form a single customer view. Something that all marketers want to achieve. Doing so requires data sharing but means organisations can communicate much more effectively with the customer and provide a consistent and relevant customer

experience across channels, drawing on the full range of information held about that customer and their channel preferences.

Question 11: Is there anything the 2011 code does not cover that you think it should? Please provide the details.

Section 5 of the code of practice goes through conditions for processing; factors to consider and what legal basis an organisation could use to share personal data. Marketers often find legitimate interest an ambiguous legal ground. In order to educate businesses, the ICO should expand the legitimate interest section. There should be detailed information about the balancing test and how to carry one out. Reference should be made to the ICO's own guidance about carrying out a legitimate interest assessment (LIA). The ICO could include examples where legitimate interest is likely to be appropriate subject to a successful LIA.

For example, the Data Protection Network has a series of examples in their legitimate interest guidance[1]:

"Example 28 – PROFILING FOR SOCIAL MEDIA TARGETING As part of a multi-media marketing campaign, a furniture retailer wishes to use a social media platform to target advertising to existing customers whilst they engage with social media. They also wish to use an algorithm provided by the social media provider to better target its advertising to 'lookalikes' - i.e. other individuals who have similar characteristics to that business' own customers. The business uploads the minimum required personal data on its customers to enable the social media targeting but excludes those who have objected to marketing. Profiling is conducted within the social media platform to enable the targeting, however, it is purely for marketing purposes and the business has assessed that it does not result in any legal or similarly significant effects upon those individuals."

Marketers often share data in order to effectively segment their customers. However, marketers want to build as comprehensive a view as possible of these individuals, so they often appoint third parties to provide additional information.

Providers can enrich organisations' existing data sets with third-party data collected from various sources. Using this information, marketers can gain a better understanding of their customers and communicate with them more efficiently and effectively. Furthermore, they can improve the personalisation of marketing communications. Therefore, the ICO should include a new section related to profiling for marketing purposes and how this can be carried out under GDPR.

The DMA has a number of best practice examples in its GDPR profiling guidance that demonstrated how an organisation can tell a customer their personal data will be used for profiling[2].

One example is from the BBC. Their privacy policy states:

"Where we provide personalised services, we may analyse the information you supply, as well as your activity on our (and other) services, so that we can offer a more relevant, tailored service. For instance, we could use your viewing history on iPlayer to provide personalised recommendations or, if the first thing you look at every day on BBC Online is the weather for Luton, we could present this information or a link to it on our homepage.

Direct Marketing Association (UK) Ltd, DMA House, 70 Margaret Street, London W1W 8SS

t 020 7291 3300 **f** 020 7291 3301 **e** dma@dma.org.uk **w** www.dma.org.uk

....

The Direct Marketing Association (UK) Ltd is a company limited by Guarantee. Registered in England No. 2667995. Registered office as above

If you are signed-in or subscribed to email newsletters, you will receive a personalised service. If you don't want to receive these services you can unsubscribe from email newsletters, or disable personalisation. Please visit Your Account in Using the BBC to find out more."

Conclusion

The DMA would be happy to speak about our consultation response in greater detail and answer any questions the ICO may have.

References:

1. Data Protection Network: "Guidance on the use of Legitimate Interests under the EU General Data Protection Regulation"
https://www.fairtrade.org.uk/~/media/FairtradeUK/Resources%20Library/Data%20Protection%20Network%20-%20Guidance%20on%20the%20use%20of%20legitimate%20interest.pdf
2. Direct Marketing Association: "GDPR for marketers: profiling"
https://dma.org.uk/uploads/misc/5b322a16cc6a6-gdpr-for-marketers---profiling-_5b322a16cc5e3.pdf

████████████
████████████████
Telephone: ██████████
Email: ████████████████████