

Information Commissioner's Office

Consultation:

Direct Marketing Code

Start date: 8 January 2020

End date: 4 March 2020

Introduction

The Information Commissioner is producing a direct marketing code of practice, as required by the Data Protection Act 2018. A draft of the code is now out for public consultation.

The draft code of practice aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules. The draft code takes a life-cycle approach to direct marketing. It starts with a section looking at the definition of direct marketing to help you decide if the code applies to you, before moving on to cover areas such as planning your marketing, collecting data, delivering your marketing messages and individuals rights.

The public consultation on the draft code will remain open until **4 March 2020**. The Information Commissioner welcomes feedback on the specific questions set out below.

You can email your response to directmarketingcode@ico.org.uk

Or print and post to:

Direct Marketing Code Consultation Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the consultation, please email the [Direct Marketing Code team](#).

Privacy statement

For this consultation we will publish all responses received from organisations except for those where the response indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals acting in a professional capacity (eg sole traders, academics etc) will be published but any personal data will be removed before publication (including email addresses and telephone numbers).

For more information about what we do with personal data please see our [privacy notice](#)

Q1 Is the draft code clear and easy to understand?

- Yes
- No

If no please explain why and how we could improve this:

The Code should set out what Government Departments and Public Bodies duties are in relation to GDPR and PECR and for what activities. We feel this document moves away from the policy intent of GDPR and PECR and severely restricts Government Departments carrying out their statutory functions. For example: A Government Department that wants to inform economically inactive people of the provisions and support they are entitled to, under this CoP Government would be unable to carry out this public task due to these restrictions.

Q2 Does the draft code contain the right level of detail? (When answering please remember that the code does not seek to duplicate all our existing data protection and e-privacy guidance)

- Yes
- No

If no please explain what changes or improvements you would like to see?

Pages 21 -23 refers;
Given the nature of Make the Call Wraparound business, which is essentially to ensure people are getting their benefit entitlements along with a range of supports and services, we would seek further clarity around what is deemed to be direct marketing. The Code of Practice suggests that it is direct marketing if it is our interests - "If, as a public body, you use marketing or advertising methods to promote your interests, you must comply with the direct marketing rules."
I would contend that it is in the customer interest as it is an issue of entitlement. Further clarification on this aspect would be most welcome.

Q3 Does the draft code cover the right issues about direct marketing?

- Yes
- No

If no please outline what additional areas you would like to see covered:

Specific guidance for Government Departments for carrying out their statutory function which has a legal basis. This document essentially ties Governments hands in dealing with the public that it is duty bound to serve.

Q4 Does the draft code address the areas of data protection and e-privacy that are having an impact on your organisation's direct marketing practices?

- Yes
- No

If no please outline what additional areas you would like to see covered

The document seems to take a very strict interpretation of the term 'direct marketing'. I'm not sure anyone ever envisaged that it would cover contact with customers of this Department about additional services which might result in financial advantage to them without explicit 'opt-in' consent.

The CoP appears to step outside the original policy intent of GDPR and PECR. Government and Public Departments, GP surgeries, Housing Bodies should always be able to contact their customers to offer support and services as long as these are completely free and in the public interest. This CoP would prevent these bodies from carrying out their statutory duties unless the individual gives 'explicit consent'. We feel that this interpretation could have an impact on the health and wellbeing of the individual and reduce the impact the department can have in changing people's lives for the better.

Q5 Is it easy to find information in the draft code?

- Yes
- No

If no, please provide your suggestions on how the structure could be improved:

Q6 Do you have any examples of direct marketing in practice, good or bad, that you think it would be useful to include in the code

- Yes
- No

If yes, please provide your direct marketing examples :

Would like a clear example of how providing further help / guidance on services that an organization (particularly a government one) offers can stray into Direct Marketing if it is "promoting the aims or services" of that organization. If a member of the public is receiving benefits and the dept believes they may be entitled to extra help can we call them to tell them this or do we need their express permission at the beginning of the relationship to call to discuss "further" options / benefits / opportunities that are available – help in getting back to work etc. The Dept has concerns that we are statutorily obliged to assist people back to work etc but in reading the guide it would suggest this strays into direct marketing if that is not the purpose of the original contact.

Q7 Do you have any other suggestions for the direct marketing code?

As above, a clear steer on Government responsibilities in contacting existing customers about "other" options open to them and also then reaching out to those who are not existing customers to see if the Department can assist without their initial agreement to do so – is this a clear no or not?

Or preferably:-

The document should set out that it doesn't apply to Government or Public Bodies carrying out their statutory duties in the public interest where the service offered is voluntary and free.

About you

Q8 Are you answering as:

- An individual acting in a private capacity (eg someone providing their views as a member of the public)
- An individual acting in a professional capacity
- On behalf of an organisation
- Other

Please specify the name of your organisation:

Department for Communities NICS

If other please specify:

Q9 How did you find out about this survey?

- ICO Twitter account
- ICO Facebook account
- ICO LinkedIn account
- ICO website
- ICO newsletter
- ICO staff member
- Colleague
- Personal/work Twitter account
- Personal/work Facebook account
- Personal/work LinkedIn account
- Other

If other please specify:

Thank you for taking the time to complete the survey