

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](mailto: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:

Whilst the code is generally clear and easy to understand, there are some areas that would benefit from further clarification:

We welcome clarification from the ICO that invitations to renewal insurance policies are not considered direct marketing. However, it is unclear what the trigger point would be for 'encouraging' an individual to renew; an example would be beneficial.

We acknowledge and appreciate the clarity given between a service message and direct marketing and were also pleased to see the addition of the reference to 'Regulatory Communications'. We feel that this new inclusion along with the requirements being imposed on firms by the FCA in relation to ensuring products meet identified customer demands and needs and the potential outcomes of the Pricing Practices consultation; mean that we will be able to inform customers about alternative/better products or services at renewal – the key will be what and how the information is provided. There are clear expectations set out in the Code of what may be considered acceptable in these communications.

However, the ICO should carefully consider where regulatory communications could potentially be deemed to be considered as direct marketing. This could lead to customers who have opted out of direct marketing being disadvantaged, as Organisations would be unable to make them aware of potentially better products or services. This directly conflicts the suggested requirement on page 7, point 1.24 of the FCA's recent GI market study for, 'firms to engage with customers to give them information about alternative deals and identify those who may need help in moving to better priced products with equivalent cover.'

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?

We welcome examples provided to support the guidance. However, some of the examples are confusing and could be improved:

~Page 23: The example in Scenario B provided is not useful, as the example 'direct marketing' message appears to relate directly to patient care and should be a service message. People who are higher risk will need flu jabs and need to be reminded as such. A more appropriate and clearer example is required. 'GP sends the following text message to a patient: 'Our flu clinic is now open. If you would like a flu vaccination, please call the surgery on 12345678 to make an appointment.' This is more likely to be considered to be direct marketing because it does not relate to the patient's specific care but rather to a general service that is available.'

~Page 39: The example is confusing as to when direct marketing could be justified under the basis that it is necessary to perform a contract. The example outlines a scenario where contract would be the basis, but then advises consent is still required. 'There may be occasions when making direct marketing a condition of service is necessary for that service. For example, a retail loyalty scheme that is operated purely for the purposes of sending people marketing offers, is likely to be able to show that the direct marketing is necessary for that service. But you need to be upfront and clear about this purpose and ensure that the consent individuals provide when signing up meets the GDPR standard.'

~Page 48: Article 14 Notice: Clarification is required from the ICO as to the extent to which Organisations can rely on fair processing notices provided by the company that originally collected the data, i.e. if an individual has already been provided with all information from the organisation who collected the data within their notice, a new Article 14 notice should not be required.

~Page 49: Disproportionate effort – the guidance notes that a fair processing notice does not need to be provided if it is disproportionate effort and, 'If the processing has a minor effect on the individual.' The ICO should advise what they consider 'minor effect' to mean in the context of direct marketing activity and provide a clear example.

~Page 50: An example of the level of detail the ICO expect to be provided in explaining how data will be used for direct marketing purposes will be useful.

We welcome the due diligence criteria detailed on page 53 as a useful checklist for consideration when sourcing data.

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:

The guidance strongly promotes that Organisations should rely on consent as their legal basis to conduct direct marketing. A good practice recommendation noted within the guidance is to obtain consent for all direct marketing regardless of whether the Privacy and Electronic Communications Regulations requires it; however, the soft opt-in remains good law and is a legitimate method to conduct direct marketing, as ratified by ICO's Legitimate Interest guidance. The guidance should respect both legal bases to conduct direct marketing equally.

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

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 :

One example of potential regulatory conflict is where a new insurance product was created which offered customers enhanced insurance coverage, but at the same price. This product was not available when customers originally purchased their insurance cover. The insurer needs to treat customers fairly by making them aware of the product and the customer will benefit from being aware of the product. A letter was sent to all customers who held the existing product to make them aware of the new product; however, one complaint resulted in a ruling from the ICO that contact was direct marketing. This has highlighted that the potential for customers who have opted-out of direct marketing to be disadvantaged, and the need for clearer guidance as to when a 'regulatory communication' is acceptable and will not be deemed to be direct marketing.

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

It would be beneficial to link the guidance relating to suppression lists on page 110, and erasure requests on page 113, to the guidance around retention on page 41. These topics directly impact how decisions are made regarding retention periods as well as considerations for what is in scope for erasure requests and should therefore be read alongside each other. This will help set expectations for both Organisations and customers on how these elements interact.

There are some sections of the Code, outlined above, which would benefit from further clarification to mitigate the risk that consumers may be disadvantaged if they do not receive information about alternative products. However, overall, we feel the Code sets clear expectations of acceptable practices, enabling firms to inform customers about products/services that may suit their needs.

# 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:

Direct Line Group

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