

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:

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 would welcome further examples in some scenarios. Please see response to question 7 for further details.

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:

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 :

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

Question heading in Code	Comments
What does directed to mean - page 16	What if online advertising is directed to a group of people as opposed to just one person? What consent requirements apply?
What are service messages? page 19	This section doesn't cover service messages that provide URL links to further content (both websites and applications). We would like to see some guidance and examples on this point. For example, it is our understanding that linking from a service message to a webpage or customer service app where the landing page does not include promotional or marketing material is acceptable. We believe that the fact that the webpage or customer service app more generally includes products / services that a customer can purchase would not breach direct marketing rules, provided that the customer is not linked / sent directly to that page (rather they would need to navigate themselves from the landing page with no promotional material to a sales page).
What are service messages? page 19	This section provides an example of a service message is: <i>"remind them how to contact you in case of a problem"</i> . Please can you confirm what, if any, "reminder" messages can be sent as service messages? Is there any guidance as to frequency here?
What are service messages? page 20	<p>The guidance provided on renewal or end of contract notices is somewhat ambiguous and subjective. Can the ICO to provide some examples of what is and isn't acceptable here? Is this guidance applicable only to messages mandated by law / regulation / industry code or does it have a broader application?</p> <p>More specifically, in the Ofcom End of Contract notifications organisations need to include BAU small print for the various tariff and handset options presented to the customer and also small print for the tariffs on offer e.g. "was" "now" pricing (in order to comply with the CAP Code and consumer legislation). The draft Code does not address this point and there is a concern that our obligations under consumer law may conflict with the Code.</p>

<b>Question heading in Code</b>	<b>Comments</b>
Are regulatory communications direct marketing? page 21	This sections states "neutral tone, without any encouragement or promotion". Please can the ICO elaborate on this point and provide some examples?
Freely given consent – page 33	Outside of loyalty schemes, is there scope to incentivise opt in? How do organisations draw the line with incentivising opt ins given that in general, providing a benefit to one person who consents is always going to be at the detriment of the person that doesn't consent (and accordingly can you actually never incentivise the provision of consent)?
Can we make our services conditional on the individual receiving direct marketing – page 37	Customer data is often collected from individuals for wifi services for verification and security. If the train company had these reasons would the example have been acceptable?
Keeping personal data up to date – page 40	What is the proactive obligation on organisations to cleanse marketing and do not call lists (noting individuals that are opted out cannot be contacted to check details of an opt out)?
How long should you keep data for direct marketing purposes – page 42	How long after a customer has left an organisation can that organization keep data for "win back" activity? Is this market / context specific? For example, if customer leaves a mobile provider and we know standard mobile service contracts are two years, it would not be sensible to message the customer until just before this two year period is nearly expired.
Soft opt in – page 75	The requirement is that the soft opt in is always obtained by the entity that will undertake the marketing. Does this rule change / can it be interpreted differently when the third party is a reseller or distributor of an organisations products / services?
Can we ask individuals to send our direct marketing – page 84	Is asking an individual to send on a link the only refer a friend activity that is permissible? What responsibility does an organisation have in relation to that individual sending the link on?
What are the ICO's enforcement powers – page 120	Are you able to provide more guidance required regarding the interplay between PECR and GDPR fines? When will the ICO provide a fine under PECR and when will one be applied under the GDRPR?

# 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:

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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