

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:

Lifecycle & ecosystem approach is great but Code is lengthy (>120 pages), repetitive and very tilted toward B2C marketing. The B2B marketing section references other sections that were clearly written with a B2C focus, which is confusing. Also, it makes very liberal use of wiggly words like 'likely'.

Recommendations:

Summary section

- **Caveat:** Put statement from p. 12 at top of Summary plus a caveat that compliance is fact-specific and contextual and readers must refer to the specific sections for detail and seek specialist help as required.
- **Concise & user-centric:** 2 pages max. Use icons or checklists / bullets and/or an infographic that maps the lifecycle & references the appropriate section for more detail (with hyperlinks). **Objective:** give a helicopter view with ability to zero in on what is most relevant to them. **Consider:** adopt the "interactive tool" approach you use on your website in the summary to help them quickly identify what will apply to them with appropriate caveats.
- **Focus on outcomes** (the what) rather than the "why". SMEs just want to know what they need to do to get it right. They don't have the luxury of time to read 123 pages to understand the rationale. Again, a checklist upfront would be more helpful than a narrative summary that explains why.

General:

- Identify content that applies across the board upfront at each stage of the lifecycle.
- In each section, clearly distinguish between B2B, B2C requirements & different channels. Finishing each section with the checklist you had in the old guide would be extremely helpful (p. 4).
- Create mobile & desktop versions for easy reading on mobile devices.
- What will the status of links to EU guidance be now versus post-Brexit transition? (See p. 11 under "Status").

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?

The links to related regulatory guidance like CMA are very helpful.

The Code extends its reach to online behavioural advertising (OBA), lead-generation and social media marketing direct messages (DMs). This is a welcome move, however, the traditional approaches to managing compliance e.g. prior consent or opt-out (where legitimate interests or soft opt-in apply) are simply not practicable or commercial in light of the digital realities in which we operate. The code is silent on how to manage this practically in the current digital environment. For example, lots of professionals use social media platforms like LinkedIn to grow their networks, raise their profiles, contribute thought leadership, generate leads or promote events, content or services. Many, like me, are 'solopreneurs' operating on their own profiles but wearing many hats. This raises a number of questions:

- How can we be sure whether a DM or connection request we send is B2B or B2C (e.g. the person may have multiple roles, not just for a single company). Which rules apply?
- Where is the line between simply networking (as you would when working a room at an event) versus versus 'lead-generation' that falls under the Direct Marketing rules?
- To what extent can we rely on the privacy settings users have set (e.g. "tell recruiters you're looking") as prior consent where consent is required?

More guidance with practical examples that reflect commercial & digital reality are required.

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

Yes but...

No

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

The lifecycle approach and the inclusion of other players in the ecosystem (e.g. brokers, profiling, data enrichments) and techniques like OBA is a really welcome move. Hyper-targeted OBA is as much of a nuisance as email marketing, if not worse as it gives the impression we're always being assessed, surveilled and analysed. It is also much more privacy invasive and risky than simple email or SMS marketing. It's also helpful that the Code references other regulators. It would be helpful to know if the ICO has an MOU with any of them on enforcement or data-sharing.

I also appreciate the emphasis on planning and building in DPbD, however when so much of the digital advertising activity involves reliance on external vendors who are more powerful than the SMEs relying on them it's unrealistic to assume they have any real control over the practices and can ensure DPbD is respected by those vendors. While I appreciate you can't tell readers not to use those services unless they confirm they are compliant, that's effectively the conclusion. Yet the view among SMEs is if these big players are able to get away with it there's no risk in using their services. You're not going to go after the SME's placing the ads for using the very services that seem to get a free pass. Without concrete guidance such as examples of the types of digital advertising techniques / services that would be effectively while respecting DPbD, they will just continue to use the same non-compliant services. More examples of effective approaches, other than mentioning "contextual" advertising, would be helpful, or a handy checklist for vetting a

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

See comments above re B2B marketing and social media.

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:

The lifecycle approach, table of contents and headings definitely make it easier to navigate to the appropriate section, but as I mentioned in my response to Q1, when trying to understand the guidance around B2B marketing I found myself flipping back and forth between different sections, only to find they were very B2C-focused, which meant I had to do additional work to align them. A layperson would likely find this very difficult and even contradictory.

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 :

B2B content marketing / enquiries. Often companies that are focused on marketing to other businesses will have a sign-up form and would like to rely on the B2B exemption to continue to market to people who sign up while offering an opt-out. However they can't always be sure that the people who sign up are businesses that satisfy the exemption. How do they manage that in practice? They would need to offer legitimate interests for certain people who fill out the form and consent for others, or do the research to confirm whether the person signing up with what appears to be a business address isn't a sole proprietor from whom they require consent. How do we manage this practically? Please provide examples. It would be very frustrating for a sole proprietor that wants to continue to get content to be bounced off a list because prior consent is required each time. If the business relies on consent at the outset for all they will likely reduce the amount of content they can send and this isn't practical. Some specific examples for how to address this very common situation would be helpful.

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

Page 17: I really appreciate that signing up for offers and loyalty schemes is considered "solicited" marketing. Please clarify whether solicited marketing must always be 'paid'. For example, would a newsletter or webinar registration be 'solicited' if specifically requested by someone even if offered for free? What about a free trial e.g. to educational content.

There's some really helpful content e.g.

- p.30 on the marketing method and whether PECR consent is required, but again this will vary if B2B versus B2C. The table is helpful.
- P. 31: clearly setting apart good practice versus what is required under the Code is helpful.
- The example on signing up for a discount is a really helpful clarification. More examples like this would be helpful.
- P.53 guidance is really helpful and would be even more effective as a checklist.

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:

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