



ABI Response to ICO consultation: Direct Marketing Code of Practice

The ABI

The Association of British Insurers is the voice of the UK's world leading insurance and long-term savings industry.

A productive, inclusive and thriving sector, we are an industry that provides peace of mind to households and businesses across the UK and powers the growth of local and regional economies by enabling trade, risk taking, investment and innovation.

Introduction

We welcome the opportunity to comment on the ICO's Direct Marketing Code of Practice, updated to reflect new legislation relevant to direct marketing.

Response

Q1 The code will address the changes in data protection legislation and the implications for direct marketing. What changes to the data protection legislation do you think we should focus on in the direct marketing code?

We are seeking that the code refines and clarifies the definition of 'direct marketing', and provides clear examples as to which activities would fall under the definition, and which would not.

Q2 Apart from the recent changes to data protection legislation are there other developments that are having an impact on your organisation's direct marketing practices that you think we should address in the code?

Yes.

Q3 If yes please specify

The interplay with FCA rules and new direct marketing rules needs to be considered. For example, The FCA's rules relating to product disclosure, e.g. ICOBS 6, require a careful balance between ensuring a customer is given information to make an informed decision, at all stages of a contract, including pre-conclusion, post conclusion and when mid-term changes and renewals are proposed. Firms also need to comply with the recently introduced Insurance Distribution Directive, which places a strong focus on the need for firms to deliver the right outcomes for consumers.

Developments in mobile devices, apps, social media, integrated digital communications across mobile, web and email, marketing via social media, are other examples of issues that have an impact on direct marketing practices, and should be considered in the code.

Q4 We are planning to produce the code before the draft ePrivacy Regulation (ePR) is agreed. We will then produce a revised code once the ePR becomes law. Do you agree with this approach?

Yes. We will seek a revised code once the ePR becomes law, but need clarity now on the way recent changes in data protection legislation affect direct marketing.

Q5 If no please explain why you disagree

Q6 Is the content of the ICO's existing direct marketing guidance relevant to the marketing that your organisation is involved in?

Yes, it is relevant to ABI members, although it the level of relevance varies according to firm.

Q7 If no what additional areas would you like to see covered?

Q8 Is it easy to find information in our existing direct marketing guidance?

Yes.

Q9 If no, do you have any suggestions on how we should structure the direct marketing code?

Q10 Please provide details of any case studies or marketing scenarios that you would like to see included in the direct marketing code.

Additional examples of good and poor practice would be helpful, in particular in the following areas:

- Consent, including obtaining consent, duration of consent, third party consents when buying in marketing lists.
- Unsolicited marketing, when and where it can apply
- Marketing list purchase due diligence
- Integrated sales processes, particularly digital marketing where there may be more than one data controller as part of a marketing campaign, e.g. with white labelled goods and services that integrate processes of insurers and retailers.
- B2B scenarios

Q11 Do you have any other suggestions for the direct marketing code?

We are seeking more clarity and emphasis on legitimate interests as a valid legal basis, to conduct postal and phone direct marketing, and to conduct electronic direct marketing if the Soft-opt in exemption under PECR applies.

The existing table in the ICO's GDPR Legitimate Interests guidance clearly defines when legitimate interests can be utilised under GDPR for direct marketing purposes, and this table should be replicated in the ICO's direct marketing code to enhance transparency and ease of reference.

The code should also include a clear explanation on the rules regarding the ability for firms to use either opt-out or opt-in as a legitimate method for collecting marketing preferences of individuals, and to be able to rely on legitimate interests to send customer satisfaction

surveys. The code would also greatly benefit from clarity from the ICO as to their expectations on the use of Legitimate Interest Assessment templates to formally document the balancing test assessment.

The ICO could further assist individuals by clarifying their position on legitimate interests and direct marketing in the 'Your data matters' sections of the ICO website to aide the understanding of the data subject and to set realistic expectations.

Association of British Insurers

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