

ICO call for views on a direct marketing code of practice

The Information Commissioner is calling for views on a direct marketing code of practice.

The Data Protection Act 2018 requires the Commissioner to produce a code of practice that provides practical guidance and promotes good practice in regard to direct marketing.

While direct marketing is an important and useful tool to help organisations engage with people in order to grow their business or to publicise and gain support for their causes, it can also be intrusive and have a negative impact on people if done badly. This can cause reputational damage to organisations and, in some cases, result in fines or other regulatory action for breaking data protection laws.

So it is important that organisations ensure their marketing activities are compliant with data protection legislation (the General Data Protection Regulation and Data Protection Act 2018) and, where necessary, the Privacy and Electronic Communications Regulations 2003 (PECR).

We have previously published detailed [direct marketing guidance](#). The new code will build on that guidance and address the aspects of the new legislation relevant to direct marketing such as transparency and lawful bases for processing, as well as covering the rules on electronic marketing (for example emails, text messages, phone calls) under PECR.

The European Union is in the process of replacing the current e-privacy law (and therefore PECR) with a new ePrivacy Regulation (ePR). However the new ePR is yet to be agreed and there is no certainty about what the final rules will be. Because of this we intend for the direct marketing code to only cover the current PECR rules until the ePR is agreed. Once the ePR is finalised and the UK position in relation to it is clear we will produce an updated version of the code which takes this into account as appropriate.

This call for views is the first stage of the consultation process. The Commissioner is seeking input from relevant stakeholders, including trade associations, data subjects and those representing the

interests of data subjects. We will use the responses we receive to inform our work in developing the code.

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

Or print and post to:

Direct Marketing Code Call for Views
Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

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

Please send us your views by **24 December 2018**.

Privacy statement

For this call for views we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

Questions

- 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?

It would be beneficial for the code to address the consent requirements in relation to marketing, in particular the application for the GDPR consent requirements alongside the Privacy and Electronic Communication Regulations (PECR) consent requirements.

It would also be beneficial for guidance to be included regarding how long consent for marketing should last before it is refreshed, particularly taking into account that information such as read receipts and click throughs from emails could potentially be used to ensure that customers were still interested and engaging with the marketing material.

Clarification would also be useful as to when it is appropriate to use the legitimate interest ground for marketing activity rather than consent and the ICO's expectations for how the right to opt out should be communicated to customers when using legitimate interests as a ground for processing.

- 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

No

- Q3 If yes please specify

Currently guidance does not always allow a conclusive view to be taken in terms of when a message is a direct marketing message and when it could be a customer service message and it would be useful for this to be clarified. Examples of the type of communications that are impacted by this include:- messages

sent to existing customers to remind them of benefits that they are entitled to under their current product, messages to a customer to prompt them to claim a free gift that they have not claimed, "thank you" messages to loyal customers and communications to remind customers that an offer they have expired interest or a quote they have requested may be expiring.

It would also be helpful if the code provided clarification that situations where other regulatory obligations require companies to provide information about the availability of products and services to customers do not constitute marketing for the purpose of the code.

To future proof the code, it would be helpful if it took account of all methods of electronic marketing such as in-app messages and push notifications. Clearer guidance would also be useful regarding the application of the direct marketing guidance to the display of specific marketing messages to customers when they log into their account on a website.

It is also apparent that there are very different approaches to managing customer unsubscribe requests in relation to marketing with some companies operating a "one click" approach and other companies requiring multiple steps such as logging into accounts and selecting multiple options in order to opt out. It would be useful for the ICO to clarify their view in the guidance as to their expectations in this area.

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

No

Q5 If no please explain why you disagree

We would just raise the possibility of confusion in having changes to the code within a short period of time, particularly if companies

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adapt their processes in line with the new code to then have to make changes again when the ePR is finalised and a new code issued.

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

Yes

No

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

No

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.

It would be useful to see case studies around the correct classification of material as marketing or customer service messages, particularly around the examples provided in our answer to question 3.

It would also be useful to see case studies on both good practice and bad practice on appropriate opt out in/opt out methods and unsubscribe practices.

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

About you

Q12 Are you answering these questions as?

- A public sector worker
- A private sector worker**
- A third or voluntary sector worker
- A member of the public
- A representative of a trade association
- A data subject
- An ICO employee
- Other

If you answered 'other' please specify:

Q13 Please provide the name of the organisation that you are representing.

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Q14 We may want to contact you about some of the points you have raised. If you are happy for us to do this please provide your email address:

██████████@bglgroup.co.uk

Thank you for taking the time to share your views and experience.