



ICO Call for Views on the direct marketing code

Response from Institute of Fundraising

December 2018

The IoF welcomes the opportunity to contribute to the call for views on the ICO direct marketing code (the Code). The Code is an important document and resource to help inform fundraisers and charities on their direct marketing practice and to ensure compliance with data protection legislation. We hope that our response plays a positive role in contributing to new version of the Code which can be as helpful and informative for practitioners for the future.

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?

For a future direct marketing code, we put forward the following suggestions which we feel would be positive additions to the Code in order to help direct charity fundraisers in their direct marketing/fundraising activities:

- Charities are more familiar and confident in using the Code for more traditional forms of direct marketing (e.g., phone and direct mail). We believe that the new Code should include much more information to cover online and digital direct marketing. This should cover both in individual charities using their digital channels for direct marketing purposes, but also on the appropriate use of data and direct marketing through third party social networking platforms (Twitter, Instagram, Facebook, LinkedIn etc).
- The growth of digital technology has not only provided new channels and methods of communication, but also brought up tricky questions – for example, the blurring of ‘professional’ and ‘personal’ accounts and profiles – and we would like to see the Code provide guidance on direct marketing through social networking platforms.
- Given that no form of guidance will ever be able to include examples and case studies to cover very scenario, we believe that the Code would benefit from a



focus on guiding organisations as to the right process and questions to go through to help inform their decision-making rather than giving prescriptive and definitive examples to be followed in every case. The Code can provide a really useful framework for organisations to embed through – giving guidance on key considerations, questions they should be asking, checklists, setting appropriate policies etc.

While charities of course have to follow the principles and requirements of the legislation as any other organisation and sector, there are inevitable differences in translating this into practice. As donations are not sales with a traditional customer/consumer relationship, and many communications - especially information on charity services for beneficiaries are of a different nature from a business/customer relationship – we would like to see more charity specific references and examples included in the direct marketing code.

Overall, we want to see the Code playing an enabling role, giving charities the confidence and guidance they need to be able to embed high standards in their direct marketing practice, setting out a framework and boundaries, and giving illustrative examples to help navigate practice.

As the code will be reissued, it would be useful to have an explanation/introduction in the Code which can direct attention to the new additions and where guidance has changed from previous versions.

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

As always, technology and innovation develop ahead of regulation – meaning that organisations have to apply regulations and requirements to new and emerging developments. It would be useful for the Code to reference how organisations should approach the application of the code to new areas and consider how to future-proof the Code so that it is as relevant as possible moving forward.



For charities, fundraising is regulated by the Fundraising Regulator, as well as being regulated by the ICO. We would welcome references to this in the new Code and to ensure that there are clear and consistent messages from the respective bodies on the requirements that charities are expected to follow as they go about their fundraising.

The principles governing data protection (e.g, using data 'fairly' and in a way people would reasonably expect) can be quite subjective and as communication channels and practice develop, people's expectations and preferences will change. We would like to see the code recognise this and give guidance on how organisations can take a responsive approach to meet the changing needs of people. We also recognise that 'the public' encompasses a range of different people with different expectations and preferences about the use of their personal data and we would welcome guidance on how to approach this in setting policies and direct marketing practice.

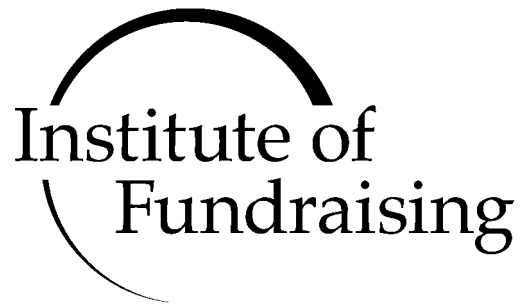
Q4 We are planning to produce the code before the draft ePrivacy Regulation (ePR) is agreed. We will then produce a revised code once the ePR becomes law. Do you agree with this approach? (Yes/No).

Yes.

Given that we do not currently know when the draft ePrivacy Regulation will be introduced and effective, we agree that it would be useful to produce a new code of direct marketing now, and then revise it as appropriate.

However, this decision should be kept under review – if it becomes apparent that ePR will be sooner than expected and we have certainty of the new requirements then this should be reviewed and the new Code paused to be able to integrate the new ePR requirements. We are mindful that a new code may mean organisations spend a great deal of time and effort to incorporate and make changes to their practice, and it would be regrettable if they then had to go through that process again in the following two or three months when it would be easier to do it all in one go.

We also think it is important to stress that charities operate differently to both public and private sector organisations. Many charities have limited resources and therefore they will need time to implement changes. We hope that the ICO will undertake a similar approach to what they have done up to this point with GDPR- acknowledging that it is an evolving process where change will not happen overnight.



Q5 If no, please explain why you disagree

We agree with the changes but still have comments (included in answer 4, above).

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 in that the Institute of Fundraising undertakes direct marketing, but our response is based on representing the views of charity fundraisers as a whole, rather than our organisation's direct marketing practice.

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

N/A

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

It is reasonably straightforward to find information in the Code, but we note that it could be made more simple to navigate and access information for charities - however, we acknowledge that this code has to be a general one, rather than specific to the charity sector. A clear glossary would be helpful, and also a 'how to use this Code' section as an introduction for those that are less familiar with the content. We also would like to see the status of the guidance presented in the code, so organisations know whether these are 'rules to be followed', or suggested guidance on best practice, and a clear presentation of 'what's changed' from the previous version.

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

The guide is currently a long PDF document, and we would welcome consideration from the ICO on different and complementary formats (e.g, a web-based resource). A long PDF document can be off-putting for some who think they need to read it as a book, rather than dipping out to find relevant information to answer a specific question. A range of additional content and guidance would be useful to aid accessibility and navigation (e.g. a list of questions and answers), or different



presentation to suit different audiences (particularly smaller charities) would be welcome.

Additional features through a web-resource (pop up boxes, 'don't forget', or 'explainer' links would make the code more engaging.

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

The areas that we think would benefit from extra scenarios and further guidance are:

- Guidance on how charities can make appropriate decisions relevant to them and their supporters to ensure privacy rights are protected, with recognition that different timeframes and activities will be appropriate for different relationships and interactions with supporters
- Direct marketing through social media platforms
- Dealing with the crossover between professional and personal relationships (e.g. a volunteer who reaches out to contact their friends to donate or take part in an event)
- Soft-opt in and when it can be used by charities following a sale of a product or service (e.g., something bought from an online shop, or purchase of a ticket to an annual fundraising event)
- Due diligence – what are the questions organisations should be asking themselves – provision of checklists or the process to go through. In the existing Direct Marketing guidance, there is a short list of considerations that the ICO views provides as an example of due diligence for buying a marketing list (p.52). It would be useful to have due diligence such as 'What needs to be considered' style boxes, that relate to different areas of direct marketing affected by PECR and the DPA.

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

Previously there has been different guidance produced by the ICO in individual PDF documents (e.g. direct marketing code, and the Privacy Notices Code).

While we do not propose making one longer document, we would like to see how the different pieces of guidance can be integrated. The opportunities here are greater if the code is thought of as primarily an online tool (easily searchable and navigable) rather than a standalone document.

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.

Institute of Fundraising.

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:

@Institute-of-Fundraising.org.uk.