

# 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](mailto: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?

1. We feel that there are a number of contradictions within the guidelines currently and we would appreciate these being ironed out.
  - Consent must be required for marketing, however there is widespread guidance from bodies such as DPN, DMA etc now suggesting that consent is not the only way, legitimate interests can be used to.
  - There is mention that PECR soft opt in may be applicable but it is lacking in detail offering room for different interpretations across the industry.
  - The guidelines specify that data providers need to have consent, it is increasingly apparent that many of them don't have consent that meets the GDPR standards. Will you be updating the guidelines or are we to understand that these data providers are in breach?
  - The guidelines specify that data providers need to name the third parties who are using the data – again many don't, so will this view be updated or are they all in breach?
2. There are a number of terms that are open to interpretation and we would appreciate greater clarity of the definitions such as: 'Intrusive'; 'reasonable' as we feel this lack of clarity leaves us vulnerable to risk.
3. We would find it helpful if Legitimate Interest was included and referenced in this document, in particular clarification on Consent verses Legitimate Interest and we would appreciate some examples of what would be acceptable.
4. It would be helpful helpful to have more detail on when PECR verses GDPR applies and how to apply them correctly. We understand that currently they have equal weighting.
5. It would be helpful if there were additional guidelines provided to 3<sup>rd</sup> party data brokers on what an acceptable privacy policy looks like and some guidelines around data

provider supply chains.

6. It would be helpful to have additional guidelines in terms of due diligence a marketer should undertake when purchasing cold lists- this could be a supplement to the DPIA. This is because it seems apparent that recent fines around cold list have been imposed on the user and not the broker. Key areas we need clarity on are:

- How frequently should the data be verified and validated with the data subject?
- If historic soft consent was obtained, then what legitimate interests would be acceptable to use this data?
- What should the data broker have provided the customer with in order to use their data for profiling – consent or just a statement in the privacy notice?
- What does the data broker need to provide the customer in terms of details about who might use their data – named consent or category description?
- How can the electoral roll be used compliantly within the regulation or is it exempt as it follows a different piece of legislation?

See an example of our current approach attached below.



Microsoft Word 97 -  
2003 Document

7. It would be helpful to have a section which clearly calls out which marketing activity falls outside of GDPR. I.e. where there is no profiling or specific targeting. Examples here might include: doordrops; partial address; advertising banners (non targeted); non- targeted social media.

8. It would be helpful for the new code to cross-reference (as appropriate) the other guides available e.g. DMA LI and consent; DPN Guide to LI; DPN 3<sup>rd</sup> party data.

9. It would be helpful to have more detail on digital marketing – especially when working with Google Analytics, Facebook data etc.

10. It would be helpful to get some clarity on whether profiling needs specific consent or just to be covered off in the privacy notice.

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

PECR – as described above

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

There is a risk of further contradictions if they are not revised/issued in tandem.

**ico.**  
Information Commissioner's Office

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?

As referenced above, it would be useful for the areas of marketing which are not covered by GDPR to be called out clearly as exemptions in the new guidance including doordrops; partial address; advertising banners (non targeted); non- targeted social media.

It would also be beneficial for PECR and the direct marketing guidelines to be co-produced to ensure minimum amount of contradictions

There is a risk that we would inadvertently breach if things are not clear.

It's costing us a lot of money to get external view points on grey areas of this regulation.

There is a risk that we are at a competitive disadvantage if we follow the regulation to the letter and our competition have a different interpretation. We have already lost significant market share and commercial value from taking a more cautious approach to GDPR than our competitors.

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?

There are several pages across the ICO's website that impact marketing but are not linked together. It would be helpful to have some navigation that links these together. Eg

There is a section on legitimate interests

There is a section in charities that permits the use of DM under legitimate interests

There is a section on the electoral roll



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 helpful to have case studies which cover the following:

Google Analytics – best practice

Data Sources - Using Electoral role for cold direct mailing

List brokers – a case study of good due diligence

Warm lists and acceptable use thereof (this area feels open to interpretations)

Insurance (separate to financial services)

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:

A group of employees working in data protection and marketing at a large private organisation



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

Legal & General

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:

[Redacted], L&G Insurance  
[Redacted], L&G Insurance  
[Redacted] L&G Group



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