

December 2018

Macmillan Cancer Support's response to the *ICO's call for views on a direct marketing code of practice.*

About Macmillan Cancer Support

We are millions of supporters, professionals, volunteers, campaigners and people affected by cancer. Together we make sure there's always someone here, to give support, energy and inspiration to help people with cancer live life as fully as they can.

In 2017, we provided personal, high-impact support to an estimated 1.6 million people through our Macmillan professionals and services. We also supported many more through our information resources and wide range of online support. We couldn't have done this without the generous donations from our incredible supporters.

Macmillan Cancer Support does not receive any government funding.

Introduction

1. It is critical that all charities adhere to the highest possible standards. Macmillan Cancer Support is supporting all bodies involved in driving up standards across the UK and is committed to implementing any recommendations that will help strengthen current regulations and provide more robust guidance around fundraising practice.
2. Macmillan therefore welcomes the opportunity to comment on changes to the Fundraising Code.
3. This submission is informed by our experience as a large charity working with beneficiaries and donors from across the UK in order to reach and improve the lives of everyone living with cancer and to inspire millions of others to do the same.

Our response to the questions asked

4. **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 consider it would be helpful to include the following:

- i. Legal bases - when covering the legal bases for processing, also include the use of legitimate interest for direct marketing explaining that this may be a lawful basis to contact individuals via post and phone.

- ii. “Individual Rights” - in particular the “right to erasure/right to be forgotten” and the “right to restrict processing” including the timeframes required for taking action and what personal data an organisation can continue to hold.
- iii. Verbal consent – explain what evidence is required to record adequately that verbal consent has been given if call recordings are not being kept.
- iv. Fundraising Preference Service (FPS) – there is also a requirement on charities to check the FPS website for individuals who do not want to receive direct marketing from charities. This should also be covered in the new Code.
- v. Marketing online – more detailed information on when it is and is not acceptable to market to particular individuals online via digital marketing. How should organisations obtain consent for marketing to particular individuals via digital marketing? What does best practice look like?
- vi. Profiling – more guidance on the use of lookalikes and customer segmentation (e.g. Experian Mosaic).
- vii. Custom audiences and retargeting on Facebook – we would like confirmation as to whether these activities are regulated by PECR.
- viii. Third party data – more guidance on the purchase of third party data from data management platforms for the creation of lookalikes. Confirmation as to who is the data controller and what checks are required?
- ix. Cookies – more information on the use of cookies and how these can and cannot be used to track particular individuals and market to them on social media. What does best practice look like?
- x. Charity health messaging – more guidance on how charities can reach their target audiences with support messaging (e.g. people living with cancer) via online marketing communications including when using sensitive personal data.

5. 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?

No.

6. Q3 If yes please specify

No response required.

7. 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 understand it could be 2020 before ePR becomes law and we consider it would be helpful to have further guidance on marketing online before this time. We have outlined the areas we would like the ICO to focus on in relation to our response to Q1 above. We consider there are significant gaps in industry understanding of what is and is not compliant with respect to digital marketing and would welcome further guidance in this area.

Should ePR bring significant changes to the way we market via digital channels we would expect a period of grace to be able to implement these changes.

8. Q5 If no please explain why you disagree

No response required.

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

Yes. The existing guidance is very useful to Macmillan's marketing teams and to its Compliance team in ensuring that we understand and comply with the relevant rules around direct marketing.

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

No response required.

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

Yes – the existing guidance is well structured, clear and easy to navigate to find the sections required. It is, however, a comprehensive document and with the addition of new wording it may require restructuring to ensure it continues to be accessible. See our response to Q9 below.

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

With the additional new wording the ICO may wish to consider whether the document should be split into numbered sections: e.g. Section 1 – Introduction and Legal framework; Section 2 – GDPR lawful bases; Section 3 – Direct Marketing etc.

There are a number of links in the existing guidance to other ICO guidance (e.g. GDPR consent, Guidance for political parties for campaigning or promotional purposes). It would be helpful to list these in an Appendix at the end of the document.

13. 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 further examples of what does and not does constitute direct marketing, i.e. material directed to particular individuals. The existing guidance gives examples of indiscriminate blanket marketing which we consider would be clear is not direct marketing. It would be helpful to have examples that are less clear.

Scenarios on market research would be useful including when it would and would not be acceptable to use a survey.

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

Yes. Paragraph 44 sets out examples of direct marketing and it is clear that charities' promotional material, campaigning and fundraising activities fall under the definition. However, we would welcome clarity on whether the marketing of charities' support services (particularly free ones provided for the public good, e.g. support line, advice line) falls under this definition as this is not currently set out.

15. Other comments/questions:

It would be helpful to know what the next stages of the consultation process will look like and whether relevant stakeholders will have an opportunity to comment on a draft version of the Code before it is published and the timescales for that.

Should the Code publication date align close to the date ePR becomes law, it would be helpful to know if the ICO would delay publication and re-consult.

It would be helpful to explain the rationale for having stricter rules in place (i.e. consent) for contacting people by email and text than there is for phone and post. Why are electronic communications deemed more intrusive than phone and post?

About you

16. Q12 Are you answering these questions as?

A charity - Macmillan Cancer Support is one of the largest British charities and provides specialist health care, information and financial support to people affected by cancer.

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

Macmillan Cancer Support, registered charity in England and Wales (261017), Scotland (SC039907) and the Isle of Man (604). Also operating in Northern Ireland.

A company limited by guarantee, registered in England and Wales company number 2400969. Isle of Man company number 4694F.

Registered office: 89 Albert Embankment, London SE1 7UQ. VAT no: 668265007

18. 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:

Please contact [REDACTED], Macmillan Cancer Support at [REDACTED]@Macmillan.org.uk or on telephone number [REDACTED] if you have any enquiries related to this response.

We thank you for your consideration in engaging with us on the proposed new Code. We look forward to your response to the consultation process.