

**Direct Marketing Code – Call for views 20181112 v1.0**  
**ICO call for views on a direct marketing code of practice**

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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?**

**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**

As digital developments continue at pace in the twenty-first century the traditional marketing methods of telephone, post, email and text message will face increased competition from things like mobile apps and web platforms. The code and guidance needs to take these into account. As it is, there is a danger organisations adopt technologies before there is explicit guidance to govern their usage. Subsequent guidance can damage work already done with the best intentions.

**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**

Such an approach may cause organisations to change their approach twice; before and after ePR. This is disruptive and counterproductive for all involved: both data controllers and data subjects. As we saw with GDPR the guidance available can evolve before a regulation becomes law. It would be best to focus these efforts on developing a new code – which are warmly welcomed – on ePR.

**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?**

Please see answers to Q3 and Q11, as these comments are also relevant here.

**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?**

See Q11 – need to structure a code based on more realistic understanding of what data subjects understand ‘marketing’ to mean in the context of universities.

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

N/A.

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

The major challenge is the definition of ‘marketing’. What is defined as ‘marketing’ under the guidance is not seen as ‘marketing’ at all by the data subjects with whom we engage as a university from the perspective of fundraising and alumni relations. Alumni of universities have a relationship with the institution that begins when they choose to apply and which is cultivated over the course of their studies and continues following their graduation. The Data Protection Act 2018’s description of ‘direct marketing’ as ‘the communication (by whatever means) of advertising or marketing material which is directed to particular individuals’ does not align with the aim of universities to maintain a relationship with their graduates so they can continue to develop mutually beneficial partnerships. The current guidance states that ‘marketing’ also encompasses promotion of ‘aims and ideals’ but a balanced view needs to be taken which accounts for the fact that universities exist for the public good and not as profit making enterprises. Universities’ engagement for fundraising and alumni relations is with individuals with whom they have a prior, usually very positive connection.

Universities change lives and the world with their teaching, research and commitment to the communities they serve. Through their support alumni are a fundamental part of this. Communications, engagement and fundraising programmes involving alumni and supporters are vastly different to corporate sales and marketing; furthermore our data shows that such interaction is expected by our graduates, and in many cases, warmly welcomed. This said, we do feel strongly that such engagement needs robust guidelines, including the provision of clear privacy notices and ways for individuals to have control of their data and opt out from some or all processing simply and easily. The steps the ICO has taken in this respect in the recent past have been positive, helpful and welcome. A further positive development, however, would be to consider and then provide more realistic clarity on what constitutes ‘marketing’ following engagement with universities to understand their experience of communicating with alumni and supporters. At present, too much of the guidance is based on assumptions which in our experience differ from what our data subjects expect. We are a values driven organization committed to best practice and the law, but the current approach of the regulatory bodies has the potential to damage the positive impact we make through our teaching, research and social responsibility agendas by restricting, however inadvertently, the ways in which alumni and supporters can interact with and contribute to our mission.

About you (for Information Governance to complete)

**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: Higher Education provider

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

University of Manchester

**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]

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