

Information Commissioner's Office

# Consultation:

## Direct Marketing Code

Start date: 8 January 2020

End date: 4 March 2020

# Introduction

The Information Commissioner is producing a direct marketing code of practice, as required by the Data Protection Act 2018. A draft of the code is now out for public consultation.

The draft code of practice aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules. The draft code takes a life-cycle approach to direct marketing. It starts with a section looking at the definition of direct marketing to help you decide if the code applies to you, before moving on to cover areas such as planning your marketing, collecting data, delivering your marketing messages and individuals rights.

The public consultation on the draft code will remain open until **4 March 2020**. The Information Commissioner welcomes feedback on the specific questions set out below.

You can email your response to [directmarketingcode@ico.org.uk](mailto:directmarketingcode@ico.org.uk)

Or print and post to:

Direct Marketing Code Consultation Team  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

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

## Privacy statement

For this consultation we will publish all responses received from organisations except for those where the response indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals acting in a professional capacity (eg sole traders, academics etc) will be published but any personal data will be removed before publication (including email addresses and telephone numbers).

For more information about what we do with personal data please see our [privacy notice](#)

Q1 Is the draft code clear and easy to understand?

- Yes
- No

If no please explain why and how we could improve this:

Q2 Does the draft code contain the right level of detail? (When answering please remember that the code does not seek to duplicate all our existing data protection and e-privacy guidance)

- Yes
- No

If no please explain what changes or improvements you would like to see?

The code does not include a section on why this code is important to have. The lack of context makes it difficult for data analysts, marketing platforms, customer data platforms, and developers to understand the impact that processing a person's data in an unfair way can have. We fear many will be asking 'so what?' throughout this guide.

- Search Engine Optimisation and how to be compliant
- Information to include in your Privacy Policy and the information third parties should be providing to their controllers they process upon.
- Cross – tracking
- ITP and handling
- How to distinguish first and third party cookies
- Information for controllers who are cooperating with processors, on how to transparently inform their customers they track using another party.

Q3 Does the draft code cover the right issues about direct marketing?

Yes

No

If no please outline what additional areas you would like to see covered:

Q4 Does the draft code address the areas of data protection and e-privacy that are having an impact on your organisation's direct marketing practices?

Yes

No

If no please outline what additional areas you would like to see covered

Companies requesting access for data rather than individuals

- The draft code also misses ITP which is having an impact on direct marketing.
- There is a lack of guidance around ensuring the identity of the individual prior to fulfilling the access request

Q5 Is it easy to find information in the draft code?

Yes

No

If no, please provide your suggestions on how the structure could be improved:

Q6 Do you have any examples of direct marketing in practice, good or bad, that you think it would be useful to include in the code

Yes

No

## GOOD:

- Asking for consent in cookie banner prior to tracking within a tool like Exponea
- Transparently indicating to the customer where they can opt out
- Having a clear opt out button on the bottom of the website
- Having retention periods that are long enough not to bother a user with a cookie banner
- Being able to opt out in less than five steps
- Anonymising PII to disconnect it from the user but be able to perform analytics
- Using consents to clean your email list and have a retention period on how long you keep email addresses
- Responsibility is on business unless the user has clear ability to exercise their privacy rights (e.g by using a browser which blocks third party cookies)
- Working with a CDP that has consent centralised and can be uploaded.
- Double opt in to ensure the customer intended to opt into emails.
- Sending an initial transactional followup email after a purchase highlighting opt in to emails.
- Double opt in to ensure the customer did not make a typo and sign up someone else
- Using "list-unsubscribe" header in emails to provide one click opt-out at the top of the email / in UI of the email client

## PROFILING/ANALYSES:

- Clearly defining how and why customers are processed and why this benefits them, how they can opt out...
- Providing an option to keep email subscription, but not personalized messages

## USAGE OF HTTPS and handling of Intelligent Tracking Prevention (ITP)

- Guidance of tracking and handling data under ITP

## BAD:

- Cookie banner which disappear after scrolling
- Fake cookie banners which do not prevent cookies dropping on the backend
- Hiding third party cookies
- Cookie banners that repetitively ask for consent
- Being able to opt out in more than five steps and having to visit multiple other company pages
- Automatically tracking using services such as:
  - Advertising trackers such as Google Analytics, Customer Match
  - Facebook, Instagram pixel
  - Cross tracking
  - Web beacons
    - **Without a legal basis**
- Hiding tick boxes which ask for consent
- No option to opt-out on mobile device (due to screen size and bad design)

If yes, please provide your direct marketing examples :

Q7 Do you have any other suggestions for the direct marketing code?

A large, empty rectangular box with a thin grey border, intended for the user to provide suggestions for the direct marketing code.

# About you

Q8 Are you answering as:

- An individual acting in a private capacity (eg someone providing their views as a member of the public)
- An individual acting in a professional capacity
- On behalf of an organisation
- Other

Please specify the name of your organisation:

Exponea

If other please specify:

Q9 How did you find out about this survey?

- ICO Twitter account
- ICO Facebook account
- ICO LinkedIn account
- ICO website
- ICO newsletter
- ICO staff member
- Colleague
- Personal/work Twitter account
- Personal/work Facebook account
- Personal/work LinkedIn account
- Other

If other please specify:

Thank you for taking the time to complete the survey