

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

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:

Yes. The Children's Society welcomes the draft Direct Marketing Code of Practice and feels this is a really positive step forward by the ICO in regards to engaging with all kinds of organisations, providing clearer guidance on matters around Direct Marketing, GDPR, PECR, the Data Protection Act 2018 and e-Privacy Regulations.

Overall we feel the Code is clear and easy to understand however we would suggest the following revisions are considered, particularly in relation to charitable organisations –

- 'Best practice' examples are described throughout the Code but we feel that in some instances this may limit what organisations can deliver. What is best practice for one organisation may not be achievable by another.
- We instead suggest the ICO outline what is a 'legal requirement' i.e. one that absolutely must be adhered to, and what are 'good examples' or 'examples' of practice, rather than 'best practice'.
- We would seek to comment on the Code's assertion that seeking consent for all forms of Direct Marketing activity is 'best practice'. There is scope for Legitimate Interests to be used as an appropriate Article 6 legal condition for forms of marketing that do not require consent and where a balancing exercise has been completed designed to assess and balance the respective interests, rights and relationship between the data subject and the data controller (Legitimate Interests Risk Assessment; also in the context of Recital 47 of GDPR). Many charities use the Legitimate Interest processing condition for postal direct marketing.
- We would recommend rewording the code to indicate that data controllers must use consent for all direct marketing based on PECR, but can use Legitimate Interest as the legal processing condition for postal marketing, providing a Legitimate Risk Assessment has been completed and MPS requirements have been adhered to.
- Legitimate Interests is widely applied by charities seeking to ensure positive experiences for supporters who engage with their causes. It is used as an Article 6 processing condition in areas of supporter database segmentation and for analysing supporter activity and preferences in relation to an organisation, the aim being to provide supporters with a targeted experience that reduces unnecessary volumes of marketing and provides a better user experience. Again, the use of the processing condition is dependent on a Legitimate Risk Assessment having been completed that assesses and balances the respective interests, rights and relationship between the data subject and the data controller. We would observe that there is scope to include this aspect in the Code. To suggest this is not 'best practice' may unfairly impact on many charity organisations.

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?

Yes. The Children's Society welcomes the additional detail in the Code and can see how this will be helpful going forward. However, we do have some concerns. At 123 pages the code is a very weighty document, and while we appreciate it is meant to be referenced, the length and layout may put off some. We would suggest -

- Breaking the code down into more manageable sections with links to examples and other guidance outside of the context of the Code.
- Utilizing technology to present the Code in a different way – pop up boxes, videos to make it more engaging.
- Using numbers instead of bullet points so it is easier to find and reference parts of the code.
- Produce a concise and accessible overview of the Direct Marketing Code similar to that created for SMEs in relation to the *Age Related Design Code*.

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:

Yes, we believe that overall the draft Code does cover the right issues about direct marketing.

We also have some observations around how social media and AI platforms are referenced throughout the Code in a very homogenous way. Social Media and AI are multifaceted. The largest social media platforms, are used by individuals in different ways to achieve different objectives, and this is reflected in the ways in which these companies operate and collect data. It would be helpful for the code to take a more nuanced approach to this area, providing guidance that reflects the rapid pace of technological development, as well as outlining examples and approaches for the main social media platforms such as Facebook, Instagram and Twitter.

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.

Yes. We largely agree these main areas have been covered and find this guidance very helpful.

However, in terms of profiling we feel that more consideration needs to be given in the Code to the expectations of our donors and the benefit to the individual that some of these practices can create. A particular area is the use of non-sensitive (not Special Categories Personal Data), publically searchable information ahead of meeting or approaching high net worth individuals. This activity is usually expected by the prospective high-level supporter, providing the individual is notified of this activity at the first meeting. The supporter is then notified of further non-sensitive profiling to which they consent. If the charity was to engage with a high net worth individual to discuss their philanthropic interests and had not conducted an appropriate level of research, this would prove disappointing and unprofessional to the individual in question and discourage them from further engaging with our organisations. We think a more nuanced approach to this area should be considered.

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:

Yes. The Code is clearly structured and useful especially when taken in reference, bite size chunks addressing specific concerns or areas. Potentially, consideration should be given to the language and tone used. Some staff who reviewed this area commented that this is aimed at a technical data protection audience and may prove difficult to engage with for fundraisers with a non-technical understanding of Data Protection. On this point, reference should be made for necessary consultation with an organisation's Data Protection Officer and training in order to enhance knowledge about how data protection impacts on direct marketing practice.

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

If yes, please provide your direct marketing examples

No. The examples shared in the Code are useful and have reinforced and affirmed much of our current approach and procedures.

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

Yes. We think prescriptive guidance around fundamental training for staff members and would advocate for the creation of a Direct Marketing check-lists that organisations need to complete to ensure compliance with the Code, similar to those compiled for the *Data Sharing 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:

The Children's Society (Registered charity no 221124)

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