

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:

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?

Please see the answer to question 3.

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

Yes

No

Data Enrichment/ Cleansing

Utilita is concerned that the guidance on data cleansing and enrichment may result in potential disruption to the energy industry.

Suppliers (and other licensed parties) have an overarching need to maintain the quality of their data, for safety purposes, contact or billing purposes and to meet requirements in terms of compliance with industry codes and licences.

Customers who move or change details, may remember to notify their energy supplier, but unfortunately this is not always the case. This may include moving house, moving out of a rented property, changing phone number etc. Suppliers such as ourselves will routinely use available sources to maintain data quality, examples include GB Mailing and Royal Mail. These data are then used to update portfolio information and, where required, industry records. This is vital work, as is evidenced by the priority placed on the data cleansing activity by Ofgem in the Faster Switching Programme (see more information below).

Where customers move property or change contact details on a regular basis, and do not notify their supplier, it can be incredibly difficult and resource intensive to contact these customers unless a cleansing or enrichment service is used to verify contact details and addresses. This is usually carried out at the time of sign up and periodically throughout a customer's time with each supplier.

On top of usual requirements to contact customers the industry is also involved in improving switching timeframes using a new central switching database. This database is populated with customer data provided by suppliers. Prior to use, this will involve significant cleansing and enrichment activities to ensure data quality is good enough to facilitate the aims of the industry wide initiative. Without data cleansing activities being completed this may lead to consumer detriment and prevent the aims of the industry initiative.

The drafting of the section on data enrichment is very worrying. We believe that – however unintentionally – these essential activities may be 'caught' by the prohibitions on data use.

While we understand the ICO's desire to ensure marketing is carried out only with explicit and informed consent, there is a high risk in this approach of unintended consequences.

Utilita believes that the DMCoP must be clarified to ensure that suppliers of essential services (such as utility suppliers or open banking) can use all reasonable means to improve the essential data they hold on their customers. This would be constrained to data items reasonably required to supply core services or maintain essential data. We believe this is a reasonable and proportionate approach for service providers to be able to comply with the data accuracy principle.

Regulatory communications

Utilita is a regulated energy provider in the United Kingdom. We are also a member of E-UK. We have reviewed the E-UK submission to this consultation in detail and we strongly support the points made on direct marketing in relation to smart meter communications.

As part of our regulatory duties prescribed by our supply licence we are required to take all reasonable steps to complete the roll out of smart meters. Part of this involves the active communication to consumers and customers of the benefits of switching to smart.

The code does not currently provide a caveat for this type of regulatory communication as the provision of a smart meter can be said to not be solely for the benefit of the consumer given that we must take 'all reasonable' steps to roll these smart meters out or face possible regulatory action from Ofgem for not meeting this threshold. This may create a regulatory trap where the code informs us that this type of regulatory communication constitutes direct marketing and, as such, cannot be sent to all customers, but Ofgem may then consider us non-compliant for not taking all reasonable steps to encourage a customer to accept a smart meter. Please note in particular the guidance quoted by E-UK.

We note that there has already been some engagement between Ofgem and the ICO regarding this issue and we welcome any further detail on this issue to enable us to balance and meet all of our obligations.

Refer a friend guidance

We are also concerned on the approach to Refer-a-Friend (RAF) activities.

Ofgem and BEIS are keen that suppliers make it easy for customers to engage in switching activity and that customers should be encouraged to do so. Where a customer has had a good experience (i.e. is a happy customer), and wishes to RAF, we see no reason why this may not be proportionately rewarded.

We agree that it is important to ensure that consumers are able to exercise choice in the contacts that they receive from companies, and that where customers have opted out of Direct Marketing (DM) this is fully respected. The appropriate way to achieve this is via a customer driven RAF process, rather than deeming such schemes non-compliant.

We have set out two scenarios. In the first, we believe that it is clearly direct marketing – the happy customer has supplied their RAF contacts' data to the company, who uses this information to DM the customer. In this situation, DM has been issued and must be supported by informed consent. We agree that in this case, the referrer cannot give consent on behalf of the RAF contacts, and this is not therefore an appropriate way forward.

In the second scenario – the happy customer communicates information about their experience to their RAF contacts. They do not provide any information to

the company on these contacts and no communication goes from the company to the RAF contacts. If the RAF contacts wish to contract with the company, they will contact the company, and may provide the relevant RAF 'reference' such that the referrer receives a benefit. The decision on whether to enter into communication with the company is entirely at the RAF contacts' discretion. We do not consider this option should be prevented or deemed a code infringement.

It is a reasonable and proportionate way in which responsible suppliers can encourage happy customers to share their positive experience for a modest benefit. A refinement might be to link the RAF scheme to the scale of the benefit. For example, a modest incentive may offer a proportionate encouragement where the customer is happy, but not encourage scheme abuse, which we believe is the specific concern the ICO is seeking to address.

The refer a friend guidance is unclear on the method of communication that would constitute onward direct marketing and would benefit from further examples to clarify when this type of activity is not considered Direct Marketing.

Scenario 1

Company A sends a communication to Customer A who has opted in to receive marketing communications. this communication asks Customer A to collect their friends' details and supply them to Company A for a benefit.

Scenario 2

Company B sends an SMS message to Customer B who has opted in to receive marketing communications. This message contains a code that Customer B's friends can use when signing up to gain a benefit for signing up. Customer B would also gain a benefit for each friend that uses this code.

Company B has not asked for Customer B's friends' data but has simply encouraged Customer B to talk to their friends about their positive experience.

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

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

If yes, please provide your direct marketing examples :

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

Please see Question 3.

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:

Utilita Energy Limited

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