

We welcome the opportunity to respond to this consultation and do so on the basis of several years of research and public policy engagement in relation to the topic of online political campaigning.

**This consultation response draws on the following publications:**

Tambini, Damian (2018) Social media power and election legitimacy. In: Tambini, Damian and Moore, Martin, (eds.) Digital dominance: the power of Google, Amazon, Facebook, and Apple. Oxford University Press, New York, NY, pp. 265-293. ISBN 9780190845117

Goodman, Emma and Labo, Sharif and Tambini, Damian and Moore, Martin (2017) The new political campaigning. LSE Media Policy Project Series, Tambini, Damian and Goodman, Emma (eds.) Media Policy Brief 19. The London School of Economics and Political Science, London, UK.

Martin Moore (2018). Democracy Hacked: Political Turmoil and Information Warfare in the Digital Age. One World.

The Report of the LSE Commission on Truth, Trust and Technology. (See section on 'Elections').

**Q1 Do you agree with our understanding of 'political campaigning' and what processing should be covered by the code?**

*By 'political campaigning' we mean activity, which relates to elections or referenda, in support of, or against, a political party, a referendum campaign or a candidate standing for election. This includes but is not limited to processing by registered political parties, electoral candidates, referendum permitted participants and third party campaigners, as defined in Political Parties and Referendums Act 2000.*

One of the big issues with the use of data is its collection and analysis pre the start of official campaign periods which are subject to regulation by the Electoral Commission (EC) under PPERA. The ICO should work with the EC to understand the potential that personal data can constitute 'in kind' contributions to campaigns that are not easily detected by the EC, and the suitability and fairness of large-scale personal data collection, analysis and modelling by a party prior to a campaign should be reviewed. The ICO and the EC should work together to examine the potential for longer campaign periods or for a regime based on an assumption of continuous campaigning. If a party has significant amounts of personal data prior to the official campaign, then it will benefit from a significant advantage during the campaign itself. It should be explicitly stated that the code is about the collection, analysis and use of personal data at any time.

**Q2 Should the code apply to other data controllers in the political campaigning process, beyond registered political parties, electoral candidates, referendum permitted participants and third party campaigners? Eg data controllers processing personal data on behalf of political campaigns, parties or candidates.**

Yes, although our preferred option would be that political campaigns not be allowed to buy data from third parties since this cannot, by definition, come with fully informed consent. The records of electoral spending published by the EC indicate that a wide range of difficult to identify intermediaries and providers of communication and consultancy services are now involved in online campaigning, which can make it difficult to identify who is involved. Not all of these intermediaries will be defined as data controllers and many will nonetheless need to be subject to the code.

**Q3 Who should the code also be aimed at ie data brokers, analytical companies, online platforms? (List as many as you think are applicable)**

It should also apply to online platforms. The platforms themselves hold so much data about individuals that if the code does not apply to them, then campaigners will be incentivized to rely even more heavily on the platforms for access to voters.

The objectives should include transparency along the value chain and should include public policy objectives that go far beyond data protection and cover the protection of democratic legitimacy. A key risk of targeted messaging is that the 'mandate' or 'manifesto' that forms the bases of the political pledge to citizens becomes fragmented and inaccessible. Candidates and parties can make specific commitments to particular voters via closed social networks like Facebook. The ability to micro-target political messages increases the likelihood that parties and candidates campaign on wedge issues, which are highly divisive in a public forum but also have the ability to mobilize voters such as matters on immigration and welfare. [Research from the U.S](#) has shown that candidates are more likely to campaign on these wedge issues when the forum is not public.

While Facebook has increased its monitoring and identification of political advertising to enforce its existing guidelines, and have publicly committed to develop an online ad repository these efforts apply only to Facebook and are no substitute for publicly accountable regulation.

*We propose the code will include the following broad topic areas:*

- *The role of data controllers in the political campaigning ecosystem;*
- *Transparency requirements in practice;*
- *Accountability, security and data minimisation requirements;*
- *Lawful bases including the new 'democratic engagement' aspect of the 'public interest' basis in the Data Protection Act 2018*
- *Using special category data;*
- *The use of personal data from the Electoral Register;*
- *Data collection directly from individuals;*
- *Using personal data collected by third parties;*
- *Personal data analytics;*
- *Direct marketing including the application of the Privacy and Electronic Communications Regulations;*
- *Online advertising and the use of social media;*
- *Post political campaign/election considerations.*

**Q4 Do you agree with the proposed topics?**

#### **Q4c Is there anything we have not listed that ought to be included?**

- The issue of informed consent. In line with the Council of Europe's proposal 13 of recommendation CM/Rec (2012) and Recommendation CM PC/Rec (2016) on Internet freedom, social network services should not process personal data beyond the specified purposes for which they have collected it. Electoral campaigning constitutes in most cases a distinct purpose for which distinct consent is required.
- The location/type of company that can be used by campaigns for data storage and analysis. Due to the use of Aggregate IQ, we still don't know what Vote Leave did with the data and probably never will. Therefore, for the purposes of campaigns, all companies involved in a UK political campaign must be registered in the UK, and campaign data of UK citizens must remain in the UK
- There could be a special category about using personal data to make inferences, for example using Facebook likes to predict political preferences.

#### **Q4b What topic areas in particular ought to be covered in the most detail?**

- Personal data analytics. Privacy helps protect freedom of speech and facilitates political debate by providing citizens a space to form opinions and develop identities free from surveillance. An online sphere where every conversation, comment or post is recorded, scanned and analysed for its commercial and political use could have negative repercussions for the free expression and exchange of views especially as privacy concerns among citizens grow
- Online advertising and the use of social media. Digital advertising currently relies on the constant collection of significant amounts of personal data, which is then organised and packaged by digital platforms such that access to individuals can be sold to advertisers – including political campaigners. It will need to be made clear what aspects of digital advertising and social media targeting can be used legitimately by political campaigns, and what aspects cannot.
- Transparency requirements in practice. Transparency is a pre-requisite to greater scrutiny and accountability of digital political campaigns, but only if transparency is of sufficient relevant detail, is provided in such a way that is assessable, and is provided in a timely manner. Again, co-ordination with the Electoral Commission on this will be key.

#### **Q5 What do you think should be covered in the new code of practice that isn't covered in current political campaigning guidance?**

[https://ico.org.uk/media/for-organisations/documents/1589/promotion\\_of\\_a\\_political\\_party.pdf](https://ico.org.uk/media/for-organisations/documents/1589/promotion_of_a_political_party.pdf)

It would be very helpful if things like data analytics models and proprietary software were taken into account, although this is less a question for the ICO than for the Electoral Commission. For the purposes of regulation and enforcement these should be costed at market rates. Currently it is too straightforward to cost them at much lower rates for the purposes of circumventing spending regulations.

#### **Q6 What factors ought to be taken into account regarding the particular circumstances of different types of election or referenda?**

#### **Q7 Please state any case studies or scenarios you would like to see included in the code?**

Vote Leave, Leave.eu

**Q8 Please state any examples of guidance, tools or good practice you have encountered that could aid compliance in this area, and could be included in the code.**

Council of Europe study, DGI(2017)11 Prepared by the committee of experts on media pluralism and transparency of media ownership (MSI-MED <https://rm.coe.int/use-of-internet-in-electoral-campaigns-/16807c0e24>)