

## Policy Delivery - advice request form

The role of Policy Delivery is to provide advice on novel or complex issues where existing lines to take may need clarifying, amending or new ones created altogether.

Once your form is submitted you will receive a response within 15 working days. If it is not possible to provide a full response within 15 working days an initial response will be given together with an estimate of the date by which a full response should be completed.

Name: [REDACTED]

CMEH Reference (if applicable): ENQ0546247

Date Requested: 14/07/2014

1. What kind of issue is it?	DPA	PECR	FOIA	EIR	Hybrid (if so, please state below e.g. Yes - DP / FOI)	Legal
Please indicate by stating "Yes".		YES				

### 1. What do you need advice on?

[REDACTED] want to place ads on customers' accounts for products and services they offer. The customer has to log in to their account before they see the ads.

"standardised ads would appear in fixed spots for a fixed period. It is probably the online equivalent of a shop having advertising posters up inside: an individual will only see them if they enter the shop (log in to our service in this case), but the posters don't change depending on who walks in. That being the case, would the ICO still consider that there is any processing of data for direct marketing? If so, presumably this means that any advertising on a site accessible only via logging in would be direct marketing.

if advertising on an online service is direct marketing, would I be right in thinking that one way of avoiding the data protection concern identified might be to offer a "no ads" version of the service, say through allowing customers to "turn off" ads through some functionality in the service? Apologies if this should be obvious, but you'll appreciate that IT build costs are reasonably high, so we want to make sure we get it right!"

Would the customer be able to request a section 11?

**2. Please give us any relevant background and facts.**

RESPONDED TO REQUEST BUT QUESTIONING ADVICE

**3. Is there anything else we need to know?** (e.g. the name(s) and location(s) of any documentation relevant to this request)

ROB COLE ASSISTED WITH INTIAL RESPONSE

**TO BE COMPLETED BY MEMBERS OF POLICY DELIVERY**

**Name:** Joanne Crowley

**Date of Response:** 23/07/2014

**4. Advice given**

As I understand it you are asking whether advertising in the situation described would constitute direct marketing for the purposes of the DPA and if so would the customers of the [REDACTED] have rights under s11.

**Background**

[REDACTED] uses an online account system in which their customers can create an account [REDACTED].

[REDACTED] wants to display banner ads and/or other ads for [REDACTED] and similar products on the 'home page' of the online account service. [REDACTED] will not be using targeted advertising but rather each customer who is logged into their account will see the same generic advertising. It is not clear however whether these advertisements in the 'logged in' area will be different from the advertisements which everyone visiting their public website will see.

**What is direct marketing?**

In s11(3) the DPA describes direct marketing as;  
"the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals."

This covers all advertising or promotional material.

Key to the above definition is whether the marketing material is 'directed to' specific individuals. This means that for example adverts shown to every visitor on a website would not constitute direct marketing for the purposes of the DPA. However personal advertisements on websites such as those based on browsing, purchase history or log-in information would be.

**Are these advertisements directed to particular individuals?**

As I understand it individuals will be logged into their account when they see the adverts therefore [REDACTED] will be processing the personal data of these individuals. However the adverts which they see will not be based on their browsing history etc but rather every individual logged into their own account will see exactly the same adverts.

The issue appears to be does the fact that the adverts are being seen by an individual in their private [REDACTED] account make these adverts 'directed to' that individual by virtue of only that individual being able to see their own account.

Unfortunately this is not a clear cut issue as just because an individual has logged on does not necessarily mean all advertising content that they subsequently see will constitute direct marketing.

We need to consider what the trigger is to generate these advertisements and the relationship between the log on information and its effect on the advertising content, if any.

For example, if the website uses the log on details as well as their personal attributes/browser history or other forms of profiling or analysis to deliver personalised or targeted adverts then this would constitute direct marketing. However, the mere fact that an individual continues to see generic banner adverts after logging in is unlikely, without the further analysis or profiling of that individual and the subsequent targeted adverts based on that analysis, to constitute direct marketing.

**Conclusion**

As it would appear that [REDACTED] do not propose to personalise the advertisements in any way to the individuals who have logged into their account then it would appear that these adverts would not constitute direct marketing. As such therefore it would appear unlikely that the individuals would have rights under s11 of the DPA in relation to these adverts.