

## ICO's consultation on its guidance for the use of personal data in political campaigning

### Summary of responses and ICO comments

In September 2019 the ICO published its consultation on its draft framework code of practice for the use of personal data in political campaigning which has now become final guidance for the use of personal data in political campaigning.

As part of this we asked a number of questions (see [Annex A](#)).

Our questions asked for views on our draft guidance. Overall we received 11 formal responses, broken down as follows:

- Data subjects – 5
- Associations/Societies - 3
- Business/commercial enterprises – 1
- Academics – 1
- Other – 1

In addition workshops were held with political parties, civil society groups, other regulators/bodies including the Electoral Commission, Market Research Society and Centre for Data Ethics and Innovation.

Respondents welcomed the introduction of new guidance, highlighting the changing landscape of political campaigning and the need for the guidance to fully reflect the law as it currently stands. Response to the draft was largely positive and the draft has now been [revised](#) to take into account feedback provided. We thank all consultees involved for their contribution.

Whilst we cannot respond to each submission in detail we have provided an analysis of the key points raised, and some comment throughout on where and how these have been addressed.

### Key points

- **Examples needed to 'show their working'**  
The workshops with both the political parties and civil society groups revealed an appetite for further detail to be provided in the examples

explaining the reasoning or 'workings' behind the conclusion that activities outlined in the examples were lawful or not.

### **ICO comment**

We agreed with this point. Examples in the guidance have been reworked to provide more detail of the rationale behind them ie 'showing the working'.

- **Not enough reference to other related sector codes and guidance**

It was noted that the framework did not reference the Electoral Commission (EC) guidance on the use of the electoral register. The EC guidance outlines usage restrictions in more detail, including the disposal of the electoral register. It was also argued that it would be useful for the framework to refer to other sector codes and guidance, such as the Market Research Society's (MRS) Code of Conduct. This would demonstrate that other professions and sectors have concerns about political campaigning.

### **ICO comment**

The guidance refers readers to the Electoral Commission for further information on electoral law. Following consultation with the Electoral Commission further links and information have been added. The ICO is however, responsible for the regulation of data protection and electronic marketing laws so it would be inappropriate to provide detailed information on electoral law as part of this guidance.

We agreed that the Market Research Society Code of Conduct is useful to refer to and have done so.

- **The different types of public opinion research should be further clarified**

The guidance should be expanded to further clarify and specify the scope of activities carried out as public opinion research and those carried out as direct marketing and how they overlap in political campaigning.

### **ICO comment**

We agreed that this area needed some improvement. The section related to direct marketing has been expanded and following consultation with the Market Research Society further detail has been included about the differences between public opinion research and political campaigning.

- **Covering of specific technologies**

The majority of respondents felt that the framework code covered the right political campaigning activities, however one respondent suggested that combination tactics such as cross channel promotion based on hashed data should be covered.

### **ICO comment**

Various new technologies are now forming part of the political campaigning landscape. The guidance discusses the use of new technologies and methods more generally and how campaigners should consider their compliance with data protection law. This means that the type of technology being used should not affect the applicability of the guidance.

- **Example relating to purpose limitation introduces an arbitrary barrier**

We received responses suggesting that the original example used to describe the purpose limitation principle would have a chilling effect on local campaigning practices – in particular the use of surveys. It was argued that the guidance was creating an arbitrary barrier through this example and that an example of a petition would be more appropriate in demonstrating an incompatible purpose.

### **ICO comment**

We agreed with the point made. The example was not intended to create any barriers where none exist so the example has been made more clear cut by reframing it as a campaigner using petition data rather than data collected via a survey. Detail has been changed to make it clear that this is an incompatible purpose – for example – no

privacy information having been provided, the subject matter being completely different etc. This change should allay concerns of an arbitrary barrier being introduced.

- **Examples relating to profiling were not relevant to UK**

Some respondents expressed concern with the examples in the guidance demonstrating where profiling could have a legal or 'similarly significant effect' on an individual. In particular there was concern with an international example involving a political party deliberately targeting members of a minority group and encouraging them not to vote (voter suppression). They argued that there was no evidence of any such activities in the UK but that by including them it insinuated that there was or that such behaviour was likely.

#### **ICO comment**

The examples were intended to be extreme to demonstrate that the bar for a 'similarly significant effect' in political campaigning was very high. An international example was used as there were no suitable UK examples that met the bar. However, on reflection there is a strong argument that examples included in guidance should only reflect the circumstances in the jurisdiction in which it applies to. The first example in particular, by raising the possibility of voter suppression, could be seen as casting doubt on the health of the UK's democratic system. The chapter includes a series of questions a political party or others should ask themselves to determine whether the processing would have 'a legal or similarly significant effect'. We think this is sufficient to demonstrate the point without the need to include examples so they have now been removed.

- **There should be a section in the guidance relating to individual rights**

Some respondents suggested there should be a section within the guidance discussing individual rights including subject access as this is an area missing from the guidance.

**ICO comment**

Although we agree that individual rights and in particular the right of access is fundamental to data protection law, we have not included a section on this within the guidance. The guidance is focused on political campaigning activity specifically. Subject access does not form part of political campaigning activities in the same way that collecting personal data does for example. We do, however, agree that it is important for such guidance to be available to political campaigners. The ICO Guide to Data Protection includes detailed guidance relating to the right of access. We will also further consider whether specific guidance on the right of access for organisations carrying out political campaigning activities is desirable.

## Annex A

# ICO consultation on the draft framework code of practice for the use of personal data in political campaigning

It is vital in any democratic society that political parties, candidates and campaigners are able to communicate effectively with voters. But it is equally vital that all organisations involved in political campaigning use personal data in a way that is transparent, understood by people and lawful.

Our current guidance on political campaigning is outdated. It has not been updated since the introduction of the GDPR and does not reflect modern campaigning practices. We have therefore drafted and are now consulting on a new framework code of practice for the use of personal data in political campaigning. This will serve both as helpful guidance in its own right as well as having the potential to become a statutory code of practice if the relevant legislation is introduced.

The framework code of practice does not introduce new requirements for campaigners but seeks to explain and clarify data protection and electronic marketing laws as they already stand. It also seeks to provide practical guidance and useful examples on ways campaigners could comply with their obligations whilst carrying out common political campaigning activities.

Before drafting the framework code of practice, the ICO launched a call for views in October 2018. You can view a summary of the responses and some of the individual responses on our website. The responses have helped inform the content of the draft framework code.

We welcome views on the draft framework code of practice. Please send us your responses by **Friday 4 October 2019**.

### **Privacy statement**

For this consultation, we will publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full.

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

### Questions

Q1 Does the draft framework code adequately explain and advise on the aspects of data protection and electronic marketing laws which are relevant to political campaigning?

- Yes
- No

Q2 If not, please specify where improvements could be made.

Q3 Does the draft framework code contain the right level of detail?

- Yes
- No

Q4 If no, in what areas should there be more detail within the draft framework code?

Q5 Does the draft framework code provide enough clarity on the law and good practice on the use of personal data for political campaigning?

- Yes
- No

Q6 If no, please indicate the section(s) of the draft framework code which could be improved, and what can be done to make the section(s) clearer.

Q7 Does the draft framework code cover the right political campaigning activities?

- Yes
- No

Q8 If no, what other activities would you like to be covered in it?

Q9 Does the draft framework code appropriately recognise and understand the ways in which political campaigning takes place in practice in the online world?

- Yes
- No

Q10 If no, in what way does the draft framework code fail to recognise and understand this?

Q11 Does the draft framework code provide examples relevant to your organisation?

- Yes
- No

Q12 Please provide any further comments or suggestions you may have about examples in the draft framework code.

Q13 To what extent do you agree that the draft framework code is clear and easy to understand?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Q14 Are you answering as:

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

Other

Please specify the name of your organisation:

Thank you for taking the time to share your views.