

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:

The draft code could benefit from clarification on the meaning of 'commercial relationship', 'promotion of objectives', 'promotion of an organisation's aims and ideals' and 'commercial marketing of good and services'. In a Social Housing environment it is unclear how these terms apply in relation to our tenants and our provision of extended services.

As a Housing Association we don't just supply bricks and mortar. We help residents to maintain their tenancies, get back into work, build sustainable communities and help residents to stay safe and comfortable in their homes, e.g. sharing tips on how to keep warm during the winter months. Please also see Q4.

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?

It would be beneficial to provide more examples to explain what is meant by promotion of 'aims and ideals' which are not related to political campaigning or fundraising.

We agree that tone can have an effect on whether a message is promotional, however, there is a concern that the following Flu Clinic example, which may be considered marketing, could cause confusion.

'Our flu clinic is now open. If you would like a flu vaccination please call the surgery on 12345678 to make an appointment.'

It could be argued that the use of softer, persuasive language is appropriate in this situation as it is the doctors' moral responsibility to encourage data subjects to consider the offering and make their own choice whether to act on this, without causing alarm. If so, could it be defined as a service message rather than marketing? There is a risk is that an individual may not opt-in to 'marketing messages' because they do not foresee how broadly an organisation may interpret this term.

Regarding the example around the regulators complaints system, it would be clearer if the example advised in what context the regulator held the contact details. If the individuals who received the email were currently receiving a service from them, could emailing to advise that they could now complain using a new system be considered a service update?

Continuing from this example, a user who rarely accesses a company's portal due to the limited services available on this, may not think to log in to see if the provision of service on this has changed. It may be considered better customer service to advise them of a service improvement proactively, rather than to wait until they had cause to complain through an arguably less convenient method.

In order to provide better customer service, and reduce the number of unnecessary calls to an organisation's contact center it would be preferable to class a change to a system that directly affects a customer as a service update in these circumstances.

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:

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

The guidance does not provide clarity about how guidance would work in practice in the Social Housing Sector. Often it is a very fine line between what we can comfortably communicate to our residents as core services and what services (which may hugely benefit them) is classed as marketing.

By way of context, as a Housing Association we are expected to be more than just a landlord providing housing and repairs and have a moral duty to help our residents. We work to build homes and communities by supporting often very vulnerable customers in a variety of ways to encourage self-sufficiency and independent living. For example, we have a Charitable Foundation which provides free advice on financial/digital inclusion issues, supporting residents back into work and guidance and signposting on a variety of subjects and its services are available to all Clarion Housing Group customers. This is all part of maintaining a healthy tenancy and arguably is a landlord service.

Whilst we agree there must be choice, our concern would be that some of the most vulnerable in society may miss important messages if we require them to opt in and, as a not-for profit organisation, the cost of postal communications can be prohibitive where there are competing priorities for use of funds.

The Regulator of Social Housing (RSH) also expects Housing Associations to involve residents in decisions that affect them in their homes and communication is key to us meeting this obligation.

It would be beneficial if we also had a series of examples of what could fall outside of the scope from the broad definition of marketing.

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:

The guidance is very long.

It may be more manageable to separate online advertising and new technologies into a separate guidance note which could also include more explanation of technical issues such as 'fingerprinting' and 'tracking pixels.'

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?

There is a risk that an overly broad interpretation of the definition of 'marketing', either in the guidance itself, or by organisations taking a risk averse approach, could have a negative effect on customers.

It would therefore be beneficial to include a series of examples where the ICO have deemed communications to fall under the definition of marketing (when the sender had not thought this was the case) and provide an explanation as to why.

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:

Clarion Housing Group

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