

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](mailto: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:

In many places, yes. It is sometimes difficult to work out whether the statements made are best practice/guidance or if they are requirements – it would be good to further clarify this. There are also areas which feel contradictory. For example, the Summary section suggests that all use of tracing takes away control from the individual to be able to choose not to tell organisations their new details; the detailed section on profiling and enriching data suggests this is OK where sharing has been agreed by the individual (pages 61/62); the example on page 62 suggests this has been done but is not reasonable.

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?

P 83 suggests that an individual may not share an opportunity with their network that was prompted by an organisation unless the originating body has consent to market to everyone in the individual's network.

We would appreciate clarification around social media for sharing fundraising, engagement and advocacy campaigns. Specific clarification between sharing in public or subscription formats (eg Facebook feeds) and direct messaging (eg Facebook messenger and WhatsApp groups), and how the guidance intersects with the social networks' various consent terms.

This might impact on examples such as

- a student society fundraising for a project via a university crowdfunding platform where the student project leaders share the project with their social media networks
- an individual running a marathon to raise funds for a charity or university, where the organisation provides them with information about the charitable work which they go on to share with their networks as part of fundraising for their running (eg using Just Giving)

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

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 :

Yes, more examples relating to digital fundraising as sited in our response to Question 3.

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

### **P 31 – Recommendation to use consent only**

The 'Good practice recommendation' on this page suggests that organisations should use consent for everything as best practice. This undermines legitimate interest as a meaningful option and alternative lawful basis for appropriately processing data. It also contradicts a blog on the ICO's website by Elizabeth Denham CBE, UK Information Commissioner, entitled '[Consent is not the 'silver bullet' for GDPR compliance](#)' in which she says "Consent is one way to comply with the GDPR, but it's not the only way.... The new law provides five other ways of processing data that may be more appropriate than consent."

### **P 40 – Mechanisms to review and update data**

It seems contradictory to state that periodic reviews should be undertaken (p 40) to review and update but suggest that organisations should not be using tools to proactively do so (e.g. tracing). It would be useful to include an example of what such a plan might look like and what tools may be utilized to ensure the plan is robust enough to minimize the risk of doing too little leading to donor info going to the wrong address.

### **P 83 – 'Tell a friend' campaigns**

The Code of Practice, as it currently stands, states that asking customers/supporters to share messages on behalf of your organisation with their own networks is a violation of PECR, as not everyone within that supporter's network would have given valid consent to be contacted by your organisation.

This interpretation of PECR is too restrictive and would severely limit the impact of digital marketing campaigns. Peer to peer giving is a highly effective mechanism in helping to increase participation gifts to an organisation, as well as increasing engagement levels.

This current interpretation of PECR would prohibit current established digital giving mechanisms, including crowdfunding, giving days and community giving for sponsored events.

For example, in the summer of 2014, the ALS Association initiated a campaign which would end becoming viral, known as the "Ice Bucket Challenge". Participants were encouraged to upload a video of themselves pouring ice water over their heads, to donate to ALS and to nominate three other people to do the same. The campaign was a phenomenal success, raising \$115 million dollars in the summer of 2014.

The practice of sharing charitable opportunities via social media is well-established and the Code, as it currently stands, is at odds with the cultural norms of how people expect to interact with social media and digital fundraising campaigns. We are also concerned at this step to undermine the free will of individuals in effecting their own control over their media presence and their ability to act as advocates for charitable causes that are close to their hearts.

# 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:

University of Bristol

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