

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:

The Code would benefit from definitions in the glossary for:

- data enrichment / enrichment activities
- wealth screening
- list brokering

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?

Nil

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:

The current Code and draft Code establish charities and political parties as caught as direct marketing for the purposes of promoting aims and ideals. This is reasonable as these groups are optional. However, government policy is created through democratic process and governmental, including local governmental, policy is the direct result of democratic action and, within reason, deemed in the public interest.

As a local authority, there are overarching duties in the Local Government Act 2000 that apply in some way to all our work including the promotion of economic, social and environmental well-being of the area.

The responsibility for economic well-being in particular, coupled with swingeing and continuing cuts to local government funding, necessitates undertaking our duties in a cost-effective way; involving the use of newer, and cheaper, technology. To describe a local authority's duties to promote well-being as direct marketing effectively forbids the use of electronic means of communication. The outcome is that a local authority either must spend a much greater amount to meet its obligations, or fail to meet its obligations. Failure to meet its statutory obligations leaves the whole of society at risk.

Page 30 of the draft Code states that "If you are a public authority you might be able to use public task for your direct marketing if you can demonstrate that the processing is necessary for a specific task or function set down in law." However, the draft Code also reminds us of the requirements under PECR, "PECR requires consent for some methods of sending direct marketing. If PECR requires consent, then processing personal data for electronic direct marketing purposes is unlawful under the GDPR without consent." Whilst the council will be able to show public interest for work defined as direct marketing under the draft Code, use of electronic communications (mainly text and email) will not be possible without consent.

The electronic mail 'soft opt-in' only applies "to the commercial marketing of products and services, it does not apply to the promotion of aims and ideals." (page 60). It will not be possible in most cases for the council to use the soft opt-in, leaving very difficult choices.

As an example, promoting the payment of council tax by Direct Debit increases the rate of payment and reduces the cost of delivery for chasing late payments. There is also a direct benefit to the customer to simplify their payments and reduce the chances of forgetting payments, which can lead to the council needing to take further action.

Encouraging payment by Direct Debit improves resources for the council and provides money that can be spent elsewhere, for the provision of social care for example. For this action to be defined as direct marketing the council cannot use text or email; with the result that more expensive and/or less effective alternative means must be used to communicate, or none at all. This takes resource directly from other services.

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

See Q3

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:

Definitions as per Q1.

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:

Nil

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

p4 second bullet has a typo

p18 3<sup>rd</sup> para you mean send not sent.

p18 Para 4 you don't need the apostrophe on individuals as it is not possessive, or you could make it singular

p27 do you mean transparency agreement or transparent agreement?

typo p40 extra 't'

p42 unnecessary apostrophe on individuals'

p50 "You need to clearly explain the purposes for which you want to process the individual's personal data for." the last "for" is unnecessary

p50 "analysing individual's behaviours." should be either "an individual's" or "individuals"

# 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:

London Borough of Barnet

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