

Direct marketing guidance: impact assessment

Economic analysis – impact and evaluation

January 2023

Title: Direct marketing guidance Lead department or agency: Information Commissioner's Office (ICO)	Impact Assessment (IA)
	Date: December 2022
	Stage: Final
	Source of intervention: Legislative
	Type of measure: Guidance
Summary: intervention and options	

What is the problem under consideration? Why is regulatory action or intervention necessary?

The Information Commissioner was required to prepare a Direct Marketing Code (the code) under section 122 of the Data Protection Act 2018 (DPA 2018) to provide practical guidance in relation to the carrying out of direct marketing in accordance with the requirements of data protection legislation and the Privacy and Electronic Communications Regulations (PECR) 2003, and such other guidance as he considers appropriate to promote good practice in direct marketing. However, given there are likely to be changes to privacy legislation in the near future, as indicated in the Data Protection and Digital Information Bill, we are instead publishing the code as guidance. This is to ensure that organisations have guidance to help them comply now rather than waiting for new legislation to be in force.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The original rationale for the guidance was in s122 DPA 2018. At that point, as the code and its remit was mandated by Parliament in s122 DPA 2018, it was not appropriate for the Commissioner to consider any alternative course of action. To the extent that the Commissioner had discretion about which issues to cover or how to interpret them within the guidance, these are described in the body of this assessment.

Will the intervention be reviewed?

The guidance and subsequent code will be kept under review in line with good regulatory practice, with s122(2) DPA 2018 allowing the Information Commissioner to make amendments or lay a replacement once a code is published.

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Executive summary

This impact assessment sets out the benefits and costs associated with the Information Commissioner's Office (ICO) direct marketing guidance. It draws on evidence including desk-based research, responses to an initial call for views, responses to our consultation and previous ICO impact assessment analysis.

The impact assessment recognises the benefits of compliant direct marketing to the economy, potential data protection harms that can come about through non-compliant direct marketing activity and market failures relating to these activities.

Background

The direct marketing code (the code) is a statutory code of practice prepared under section 122 (s122) of the Data Protection Act 2018 (DPA 2018). Since DPA 2018 came into force, there has been a consultation and a bill proposing changes to privacy legislation.¹ To allow time for the bill's passage to conclude whilst still providing regulatory certainty to organisations, we are publishing the code as guidance. This guidance forms the basis for the code once the changes to the legislation are confirmed.

The key outcomes of the guidance are intended to be:

- the provision of practical guidance for organisations on the law and good practice in relation to direct marketing;
- a better understanding by organisations of how to conduct direct marketing activities fairly and transparently;
- an increased level of public trust about how organisations use their data; and
- economic and societal benefits from effective, compliant direct marketing.

The original rationale for the guidance was in the statutory duty to produce a code. However, beyond this, the guidance is likely to reduce the risk and severity of data protection harms and wider harms related to the Privacy and Electronic Communications Regulations (PECR). It is also well-aligned with government policy and industry codes. Taken together, there are strong reasons for the guidance.

Direct impacts

Direct incremental costs of the guidance are limited in that many of the requirements set out in the guidance are part of existing legislation that organisations and those engaging in direct marketing must already comply with.

¹ Data Protection and Digital Information Bill 2022, available at: <https://bills.parliament.uk/bills/3322>, accessed 14 December 2022.

The main direct impacts assessed are the costs and benefits to controllers of familiarising themselves with the guidance. The cost of familiarisation to data controllers in terms of the time taken to read through the relevant materials is indicatively estimated at £51.6 million to £75.1 million. The benefits are achieved through helping controllers to comply more easily with existing legislation. These impacts are considered to be an inevitable consequence of DPA 2018 and the UK GDPR and are therefore not attributable to the guidance itself.

Indirect impacts

The indirect impacts are those that come about through a change in behaviour or reallocation of resources following implementation of the guidance.² Although it is not possible to rule out indirect costs resulting from the guidance, it is difficult to identify any that are likely to bring about significant indirect incremental impacts. As such, the assessment focuses on the potential indirect benefits. The main potential indirect benefits considered are:

- Increased confidence: by providing greater regulatory certainty and clarity, organisations should feel more confident in processing personal data for the purposes of direct marketing which could unlock opportunities for growth and innovation. Increased accountability could also result in higher public trust, reducing chilling effects on product or service engagement.
- Reduction of data protection harms related to direct marketing: the guidance is likely to contribute to reducing the risk and severity of relevant harms by encouraging organisations to comply and demonstrate accountability.

Conclusion

The guidance has a strong rationale and aligns well with relevant policy. Although quantification of all costs and benefits has not been possible and there are significant uncertainties as to the scale and scope of impacts, the analysis demonstrates that there are limited direct incremental impacts from the guidance. Where the guidance has the potential to generate incremental impacts, it is through its indirect impacts. The analysis demonstrates the potential for the guidance to drive significant benefits through increased confidence in direct marketing and reductions in data protection harms. These benefits are likely to substantially outweigh any potential costs.

² Further discussion on direct and indirect impacts can be found in: Regulatory Policy Committee, [RPC case histories – direct and indirect impacts \(2019\)](#).

1. Background

1.1. Problem under consideration and rationale for intervention

This section provides:

- an overview of the context of the guidance;
- an overview of the benefits of compliant direct marketing to the economy;
- examples of potential data protection harms that can come about through non-compliant direct marketing activity; and
- relevant market failures relating to these activities.

1.1.1. The direct marketing guidance

The Information Commissioner's Office (ICO) is committed to producing a direct marketing code of practice. The direct marketing code (the code) is a statutory code of practice prepared under section 122 (s122) of the Data Protection Act (DPA 2018)³. The ICO produced a draft code for consultation in January 2020. Since then, there has been a consultation and a bill proposing changes to privacy legislation.⁴ It is important for the ICO to give organisations regulatory certainty. Given the proposed legislation could potentially lead to substantial changes to privacy in the near future, we are instead publishing the code as guidance, as it is not appropriate to publish the code while there is uncertainty. This means that organisations will have guidance to help them comply for now rather than waiting for the new legislation to be in force. This guidance will form the basis for the code once the changes to the legislation are confirmed.

The guidance replaces the old non-statutory direct marketing guidance⁵ issued by the ICO. In addition, it reflects changes in the type and amount of direct marketing activity conducted by organisations.

The ICO has therefore prepared the updated direct marketing guidance to provide practical direction to organisations when carrying out direct marketing. The guidance covers the requirements of the data protection legislation and e-privacy legislation and such other guidance as the ICO considers appropriate to promote good practice in direct marketing. The guidance does not impose any requirements additional to those in the legislation. It will help organisations to comply with their legal obligations under the UK General Data Protection

³ DPA 2018, available at: <https://www.legislation.gov.uk/ukpga/2018/12/section/122/enacted>, accessed 14 December 2022.

⁴ Data Protection and Digital Information Bill 2022, available at: <https://bills.parliament.uk/bills/3322>, accessed 14 December 2022.

⁵ ICO 2018, [Direct marketing guidance \(ico.org.uk\)](https://ico.org.uk).

Regulation (UK GDPR)⁶, the DPA 2018⁷ and the Privacy and Electronic Communications Regulations 2003⁸ (as amended) (PECR).

High level objectives of the guidance

Bearing in mind the requirements set out above, the key outcomes of the guidance are intended to be:

- the provision of practical guidance for organisations on the law and good practice in relation to direct marketing;
- a better understanding by organisations of how to conduct direct marketing activities fairly and transparently;
- an increased level of public trust about how organisations use their data; and
- economic and societal benefits from effective, compliant direct marketing.

Policy alignment

An important part of the context for the guidance and its objectives is its alignment with relevant government policy and other rules and industry standards. The table below sets out some of the most relevant examples and outlines alignment with the guidance.

Table 1: Policy alignment

Policy, regulation or code	Direct marketing guidance alignment
Department for Culture, Media and Sport (DCMS), National Data Strategy, 2020 ⁹	The guidance has been developed with a focus on reducing the burden to businesses and other organisations whilst promoting the benefits of responsible use of data. This aligns well with the objectives of the strategy.
Communications Act 2003 ¹⁰	The guidance promotes many of the regulatory objectives of the Act such as regulations around

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council 2016, available at: <https://www.legislation.gov.uk/eur/2016/679/contents>, accessed 14 December 2022. The GDPR is retained in domestic law now the transition period has ended, but the UK has the independence to keep the framework under review. The UK GDPR sits alongside an amended version of the DPA 2018. See here for more information: <https://ico.org.uk/for-organisations/dp-at-the-end-of-the-transition-period/data-protection-now-the-transition-period-has-ended/the-gdpr>, accessed 14 December 2022

⁷ DPA 2018, available at: <https://www.legislation.gov.uk/ukpga/2018/12/section/122/enacted>, accessed 14 December 2022

⁸ The Privacy and Electronic Communications (EC Directive) Regulations 2003, available at: <https://www.legislation.gov.uk/uksi/2003/2426/contents>, accessed 14 December 2022

⁹ DCMS (2020): <https://www.gov.uk/government/publications/uk-national-data-strategy/national-data-strategy>

¹⁰ Communications Act 2003, available at: <https://www.legislation.gov.uk/ukpga/2003/21/contents>, accessed 14 December 2022

silent and nuisance calls.

Advertising Standards Authority (ASA), UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (CAP), 2010 ¹¹	The CAP promotes compliance through its central principle of legal, decent, honest and truthful marketing communications. It also specifically references guidance available from the ICO to aid compliance with data protection legislation. The guidance aligns well with this and specifically references the ASA and the CAP.
Data & Marketing Association (DMA) Code ¹²	The DMA Code focuses on five key principles: putting your customer first, respect privacy, be honest and fair, be diligent with data, and take responsibility. All of which align well with the objectives of the guidance.
The Consumer Protection from Unfair Trading Regulations 2008 ¹³	The guidance aligns well with the regulatory objectives, particularly those around unfair, misleading or aggressive marketing practices.

As demonstrated in the table above, the guidance aligns well with relevant policy, rules and industry standards.

1.1.2. Direct marketing in the economy

Direct marketing plays a significant role in the economy. The main function of marketing is to inform, influence or attract consumers to products, services, aims or ideals, whether they be commercial, charitable or public. For the purposes of this assessment, where we refer to products and services, this also includes aims and ideals. Likewise, where we refer to suppliers, this includes both suppliers of products and services and promoters of aims and ideals. Whilst it is recognised that direct marketing is designed to benefit suppliers of products and services, there are potential benefits for consumers and wider society.

The main mechanism for benefits to accrue to society is where there is incomplete information, and marketing materials are accurate, the direct marketing activities can help to fill the information gap. Three examples of this are as follows:

- New products and services: direct marketing can make consumers aware of products and services that they then derive benefits from.

¹¹ ASA (2010): <https://www.asa.org.uk/static/47eb51e7-028d-4509-ab3c0f4822c9a3c4/The-Cap-code.pdf> , accessed 14 December 2022.

¹² Data & Marketing Association Code, available at: <https://dma.org.uk/uploads/misc/dma-code-v7.pdf>, accessed 14 December 2022.

¹³ The Consumer Protection from Unfair Trading Regulations 2008, available at: <https://www.legislation.gov.uk/uksi/2008/1277/contents/made>, accessed 14 December 2022.

- Alternative products and services: direct marketing can make consumers aware of better quality products and services that increase the benefits derived.
- Alternative suppliers: direct marketing can make consumers aware of alternative suppliers that provide better or cheaper products and services.

Furthermore, where direct marketing serves to provide information on a product or service's price or quality, it can help to increase competition in markets incentivising suppliers to reduce prices or increase the quality of products and services.

Given direct marketing can be carried out both in-house or through external suppliers, it is difficult to estimate the size of industry. It is also difficult to separate out direct marketing from marketing activity more generally. As such the analysis below is high level but provides some context.

There are 58,300 businesses registered with Companies House whose main activities involve marketing and advertising. This makes up 1.2% of all active businesses on the register.¹⁴

According to DCMS data, there were 229,000 people working for companies that identify their main activity as Advertising and Marketing in March 2022. However, this does not include advertising and marketing professionals that work in companies with other functions.^{15, 16}

Office for National Statistics (ONS) data show there were 549,400 people employed in advertising and marketing related professions across the UK economy in 2021, equivalent to 1.7% of the total number of employees in the UK.¹⁷

1.1.3. Data protection harms related to the processing of personal data for the purposes of direct marketing

As noted in the section above, direct marketing is an important part of the economy and wider society. Here, we outline some of the potential data protection harms that can arise through direct marketing activities, particularly non-compliant activities.

¹⁴ ICO analysis of Companies House Data (May 2022), available at:

http://download.companieshouse.gov.uk/en_output.html. Analysis of SIC codes 70210, 7311, 7312.

¹⁵ DCMS (April 2021 – March 2022): <https://www.gov.uk/government/statistics/dcms-sector-economic-estimates-employment-apr-2021-mar-2022> table 2, 'Advertising and marketing'.

¹⁶ Note that this includes those working on marketing activities that are more general rather than specifically direct marketing.

¹⁷ ONS (2022), Annual Population Survey – [Employment by Occupation](#), Analysis of SOC: 1132; 1134; 2472; 2473; 3543.

The harm to individuals' rights and freedoms can vary in degree and type. In line with damages, as described in Article 82 of the UK GDPR¹⁸, harms can include:

- **physical harm:** physical injury or other harms to physical health;
- **material harm:** harms that are more easily monetised such as financial harm; or
- **non-material harm:** less tangible harms such as distress.

This means that harm can arise from actual damage and more intangible harm, including any significant economic or social disadvantage. Of course, harms may also fall into more than one of these categories.

Harms have the potential to affect different groups within society in different ways, creating distributional impacts. This can mean that harms are exacerbated for more vulnerable or harder-to-reach groups or communities.

There may be a harmful impact on wider society. For example, unfair or unlawful processing of personal data for the purposes of direct marketing may lead to a loss of public trust. Ultimately, this undermines the important role that direct marketing serves in our economy.

We have identified some relevant examples of harms that occur when personal data is processed for the purposes of direct marketing using desk-based research. Direct marketing is not always the main or sole contributor to the harm and the harms can occur as both a direct or indirect result of the activity. These examples are illustrative only and should not be viewed as an exhaustive or hierarchical list.

Bodily or emotional harm

Where direct marketing becomes a significant nuisance, it can become distressing, particularly where vulnerable individuals are involved. For example, unwanted direct marketing targeted at older people can lead to distress. Targeting direct marketing to those that have suffered a loss or tragedy can also cause significant distress. This can happen as a result of incorrect or out of date records.

Example: predatory marketing calls

The ICO fined five companies a total of £405,000 for making over 750,000 unwanted direct marketing calls targeted at older, vulnerable people. Complainants reported feeling frightened, anxious and distressed by the aggressive tactics used to sell insurance, white goods and other household

¹⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council 2016, available at: <https://www.legislation.gov.uk/eur/2016/679/article/82>, accessed 1st August 2022.

products and services.¹⁹

Financial harm

In some circumstances direct marketing activity could lead to loss of income. Examples of how this could occur are where personal data is used to target those in financial difficulty with direct marketing for high interest loans or gambling material is targeted towards those with gambling addiction problems.

Example: Bonne Terre Ltd

The Gambling Commission has been working with industry to ensure paid for adverts are targeted away from vulnerable groups. In 2022, Bonne Terre Limited were fined £1.17m by the Gambling Commission for sending promotional emails to customers who had self-excluded or opted out of receiving marketing. Action was taken in recognition that excluded customers were likely to be suffering from gambling harm.²⁰

Discriminatory harm

Where direct marketing uses or infers information on protected characteristics, either directly or indirectly, to target individuals, this can lead to discriminatory harms. One example could be where direct marketing uses profiling. The use of profiling could potentially lead to certain groups of people missing out on offers or products and services or being offered higher prices than others. This can be particularly impactful for services that have a significant impact on quality of life. It could also lead to groups of people receiving disproportionately greater volumes of nuisance marketing.

More generally, a key principle under the UK GDPR is that processing of personal data is minimised. This includes not processing irrelevant or excessive personal data. Personal data must also be accurate and processing of personal data must be fair and lawful. Special category data includes personal data revealing or concerning information about racial or ethnic origin, or religious or philosophical beliefs. This type of data needs more protection because it is particularly sensitive.

Loss of control of personal data

Personal data can be collected for a particular purpose and then used for another. Where this was not clear when the data was collected or people are not

¹⁹ ICO (2022): <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/03/ico-takes-action-against-companies-over-predatory-marketing-calls-targeting-elderly-vulnerable-people>, accessed 14 December 2022

²⁰ Gambling Commission (2022): <https://www.gamblingcommission.gov.uk/news/article/gbp1-17m-fine-for-marketing-to-vulnerable-consumers>, accessed 14 December 2022.

fully aware of how their data is being used and shared, this can lead to feeling a lack of control. This loss of control can lead to anxiety and an inability to manage risk. The Data and Marketing Association Code requires members to be clear, open and transparent in their engagement with consumers.²¹

Example: Loss of control over targeting algorithms

When Annie became pregnant in 2019 her social media feeds filled with ads for baby products, prams and parenting groups. Annie suffered the bereavement of a lost pregnancy, but continued to see targeted ads. Despite attempts to stop being targeted with the ads, they kept appearing causing considerable distress every time Annie went online.²²

Societal harms

Given the wide scale use of direct marketing, there is the potential for harms to arise at a societal level. Examples of this could be where people avoid accessing services or purchasing products because of a fear of harms related to targeted direct marketing. On a larger scale, this could lead to negative economic impacts or a reduction in the effectiveness of public services.

1.1.4. Summary of rationale for intervention

The original rationale for the guidance was in the statutory duty to produce a code (s122 DPA 2018). However, beyond this, the guidance is likely to reduce the risk and severity of data protection harms and wider harms related to PECR. It is also well-aligned with government policy and industry codes. Taken together, there are strong reasons for the guidance, despite it currently not having statutory code status.

1.2. Approach to the guidance

The development of the guidance was supported by a substantial body of evidence including extensive consultation. A call for views commenced in November 2018 to inform the initial drafting of the guidance, for which 104 responses were received.²³ This was then followed by a public consultation on a draft code, concluding in March 2020 for which there were 148 responses.²⁴ Respondents included stakeholders from industry, the public sector and the third sector as well as members of the public.

²¹ DMA Code, available at: <https://dma.org.uk/uploads/misc/dma-code-v7.pdf>, accessed 14 December 2022.

²² Huffington Post (2019), available at: https://www.huffingtonpost.co.uk/entry/women-affected-by-miscarriage-and-infertility-are-being-targeted-with-baby-ads-on-facebook_uk_5d7f7c42e4b00d69059bd88a, accessed 14 December 2022.

²³ ICO (2019): <https://ico.org.uk/about-the-ico/responses-to-the-call-for-views-on-the-direct-marketing-code-of-practice/>.

²⁴ ICO, available at: <https://ico.org.uk/for-organisations/guide-to-data-protection/key-dp-themes/direct-marketing>, accessed 14 December 2022.

Key themes from the consultation included:

- clarity and ease of understanding;
- level of detail;
- the issues and areas covered; and
- ease of finding information.

The comments received were reviewed and fed into the approach for the final draft of the guidance to ensure it considered the needs of stakeholders.

1.3. Scope of the guidance

The guidance focuses on direct marketing. Direct marketing is given a formal definition within s122(5) of the DPA 2018 as meaning “the communication (by whatever means) of advertising or marketing material which is directed to particular individuals”.

Direct marketing includes the promotion of aims and ideals as well as advertising goods or services. Any method of communication which is directed to particular individuals could constitute direct marketing. Direct marketing purposes include all processing activities that lead up to, enable or support the sending of direct marketing.

1.4. Affected groups

Direct marketing activities are undertaken by a range of organisations and individuals across the economy. Direct marketing can be carried out both in-house or through external suppliers and for a variety of reasons. It would be reasonable to assume that all organisations engage in or procure some form of marketing at some point and that may involve direct marketing. As such, it is difficult to accurately scope the industry and those most likely to be affected by the guidance.

1.4.1. Individuals whose data is used for direct marketing purposes

As explained above we assume that the number of individuals directly affected by direct marketing to be the whole of the UK population.²⁵ According to the latest estimates from the ONS, the population of the UK stood at around 67.1 million in 2020.²⁶

In the absence of robust data, we are unable to say what proportion of this population is more or less likely to be impacted (positively and negatively) by direct marketing or the guidance. As such, we are unable to provide detailed analysis of distributional impacts. However, where certain impacts are more or

²⁵ Although direct marketing can involve individuals outside of the domestic population, the Impact Assessment is limited to the UK. The same limitation is applied to organisations and other affected groups.

²⁶ ONS (2021) [Mid-Year Population Estimates](#)

less likely to affect different groups of people, qualitative commentary is provided.

1.4.2. Organisations and individuals who are engaged in direct marketing

These are the organisations that process personal data for direct marketing purposes. It includes both those whose main purpose is direct marketing (eg direct marketing agencies) as well as those who are engaged in direct marketing to support their main activities.

The ICO data protection register has 17,404 individuals or organisations registered under marketing, which could provide a conservative lower-end estimate of those whose main purpose is marketing.²⁷

More generally, it is not possible to state precisely which organisations the guidance is relevant to. As such, we have made the simplifying assumption that to some extent the guidance is relevant to all organisations, which includes most businesses and charities, as well as some individuals such as sole proprietors. While it is less likely that public bodies engage in direct marketing there may also be occasions when the guidance is relevant to them.

Although data does not exist to accurately describe all organisations, we have collected data on some key groups to provide an indicative quantitative estimate. The key organisation types and sources are listed in Table 2 below.

Table 2: Affected organisations and sources

Organisation type	Coverage	Source
Businesses	Registered and unregistered businesses and sole proprietors in the UK	Business Population Estimates, 2022 ²⁸
Public bodies	All central and local government organisations in the UK	Business Population Estimates, 2022
Charities ²⁹	All those registered with the charity regulators in	Charity Commission, Register of Charities for England and Wales, May

²⁷ ICO (May 2022), Analysis of the [Data Protection Register](#)

²⁸ BEIS (2022): [Business Population Estimates](#).

²⁹ Note: there is potential for double counting of charities that are registered with charity regulators and also set up as limited companies, however, we don't expect this to have a significant impact on the assessment given the very small proportion of organisations this represents.

the UK

[202230](#)

[Charity Commission for Northern Ireland, Register of Charities, May 202231](#)

[Scottish Charity Regulator, Scottish Charity Register, May 2022](#)

Although this does not provide coverage of all potential relevant organisations (eg unregistered community groups), it does help to provide a reasonable and proportionate indication of the scale. The indicative estimate of the total number of organisations in these groups is 5.71 million.³² The guidance is likely to be of most relevance to those processing personal data other than that of their employees. We estimate this to be 3.7 million organisations.³³

1.4.3. The Information Commissioner

This is the regulator with primary responsibility for regulating the UK GDPR, the DPA 2018 and PECR. This includes investigating potential infringements of the underpinning legislation and using relevant enforcement powers as appropriate. The Commissioner will be affected as his office will need to provide advice, promote good practice and assess conformance with the law.

1.4.4. Justice system

The justice system could be affected, as a court or tribunal may take into consideration the guidance in any proceedings before it to the extent that it appears relevant to the questions it is required to determine.

1.4.5. Wider society and third parties not engaged in or impacted directly by direct marketing

It is not possible to quantify this affected group but is likely to include the whole of wider society, given the reach of direct marketing activity.

³⁰ Charity Commission (2022), available at: <https://register-of-charities.charitycommission.gov.uk/sector-data/charities-by-income-band>, accessed 2nd May 2022 Charity Commission (2022), available at: <https://register-of-charities.charitycommission.gov.uk/sector-data/charities-by-income-band>, accessed 2nd May 2022.

³¹ Charity Commission for Northern Ireland (2022): available at: <https://www.charitycommissionni.org.uk/charity-search/?pageNumber=1>, accessed 2nd May 2022 Charity Commission for Northern Ireland (2022): available at: <https://www.charitycommissionni.org.uk/charity-search/?pageNumber=1>, accessed 2nd May 2022.

³² BEIS (2022) [Business Population Estimates](#)

³³ We calculate this figure using BEIS (2022) and DCMS (2020) Table 1. Estimates are for businesses which process or collect personal data from sources other than employees. – see Annex A for more detail.

1.5. Approach to the impact assessment

We have assessed the impacts using cost-benefit analysis, which aims to identify the full range of impacts of the guidance. However it should be noted that it is not practical nor necessary for the purpose of this impact assessment to undertake a forensic analysis of all of the guidance's implications. The approach used in this assessment is based on that of the impact assessment for the Age Appropriate Design Code, data sharing code and the draft journalism code³⁴ and follows the principles set out in HMT Green Book³⁵ and Regulatory Impact Assessment guidance.³⁶

In identifying the potential impacts of the guidance it is important to distinguish between:

- incremental impacts – these are impacts that can be attributed to the guidance itself;
- impacts of the requirements of section 122 of the DPA 2018 – as the original rationale for the guidance; and
- impacts of requirements of the UK GDPR, the DPA 2018 and PECR – these are not incremental to the guidance because organisations are expected to be compliant with these requirements already.

It is not always possible to categorise impacts distinctly, but our assessment focuses on the incremental impacts of the guidance. These incremental impacts may be direct or indirect:³⁷

- **Direct impacts:** these are 'first round' impacts that are generally immediate and unavoidable with relatively few steps in the chain of logic between the introduction of the measure and the impact taking place.
- **Indirect impacts:** these are 'second round' impacts that are often the result of changes in behaviour or reallocations of resources following the immediate impact of the introduction of the measure.

Accordingly, our assessment is split into two main parts considering the guidance's direct and indirect incremental impacts.

³⁴ ICO (2021): <https://ico.org.uk/media/about-the-ico/documents/4018652/draft-economic-impact-assessment-202110.pdf>; ICO (2021): <https://ico.org.uk/media/2619796/ds-code-impact-assessment-202105.pdf>; ICO (2020): https://ico.org.uk/media/about-the-ico/documents/2617988/aadc-impact-assessment-v1_3.pdf.

³⁵ HM Treasury (2022): <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>.

³⁶ BEIS (2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776507/Business_Impact_Target_Statutory_Guidance_January_2019.pdf.

³⁷ Further discussion of direct and indirect impacts can be found in: Regulatory Policy Committee, [RPC case histories – direct and indirect impacts \(2019\)](#).

To assess direct impacts, we have focused on key parts of the guidance that may impact any of the affected groups. We present each element in turn and consider, overall, how likely it is that there would be an incremental impact. We then consider the potential indirect impacts as a whole and how likely it is there would be an incremental impact.

In line with Green Book guidance,³⁸ we've have sought to identify any distributional impacts. These are impacts that differ for individuals depending on their characteristics (eg income level or geographical location). As stated in the Green Book, it is not proportionate to calculate all distributional effects but where possible we provide qualitative commentary on impacts that may disproportionately affect certain groups.

The evidence base primarily constitutes desk-based research, responses to the call for evidence and consultation on the draft code and previous ICO impact assessment analysis.

The original rationale for the guidance was s122 DPA 2018 as it was initially developed as a code. As the code was mandated by Parliament in s122 DPA 2018, the Commissioner did not have an option to consider alternative action or regulatory intervention. For this reason, this assessment does not consider alternative options. It is simply an appraisal of the introduction of the guidance against the counterfactual explained below.

1.5.1. Counterfactual

The 'counterfactual' in an impact assessment is the baseline against which the incremental impacts of the introduction of a policy can be estimated. Absent the introduction of the guidance, the existing legislation including UK GDPR, DPA 2018 and PECR would continue to apply and form the counterfactual for the purposes of this assessment.

In line with impact assessment guidance,³⁹ the assessment assumes compliance both with existing legislation and guidance in the absence of specific evidence to suggest otherwise. This simplifies the assessment, but it is not intended to suggest that there is total compliance. If we did identify any specific lack of compliance, the guidance would help organisations to improve.

The guidance does not impose any additional legal requirements, which limits the guidance's incremental impacts over and above that of the counterfactual. This is discussed further in Section 2.

³⁸ HM Treasury (2022): <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>.

³⁹ BEIS (2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776507/Business_Impact_Target_Statutory_Guidance_January_2019.pdf.

1.5.2. Quantification

Quantified analysis of the impacts is particularly challenging for the guidance because of its wide ranging scope and the difficulty in quantifying the affected groups, as explained above.

Calculating the incremental cost to organisations is also complex because the nature of these costs varies considerably depending on the different factors, for example:

- how sophisticated and mature the organisation's existing data protection and e-privacy systems and processes are;
- the nature of the activities;
- the processing associated with those activities; and
- the level of risk to individuals.

Due to their intangible nature, it is similarly challenging to quantify many of the guidance's benefits, such as:

- reductions in harm;
- increased organisation understanding; or
- increased trust amongst the public.

Our analysis therefore focuses primarily on non-monetised impacts. However, where possible, we have provided high-level quantitative analysis to indicate scale.

2. Costs and benefits of the guidance

In this section, we consider the potential costs and benefits of the guidance. Our aim is to understand whether there are likely to be significant impacts on affected groups (both positive and negative) and to judge the guidance's overall impact on society.

We draw on a mixture of quantitative and qualitative evidence but, as noted above, our analysis is limited by the evidence available. The analysis of effects is split into direct and indirect impacts as set out in Section 1.5.⁴⁰

Direct impacts are given the same weight as indirect impacts. The only distinction is that the indirect impacts are considered collectively because these are not sufficiently distinct to justify individual analysis.

The impacts are assessed under the following headings which then feed into our conclusion on the guidance's overall impact on society:

- **Cost:** a discussion of the related costs that could bring about significant impacts to affected groups.
- **Benefits:** as with costs.
- **Categorisation of impact:** our assessment of whether there is likely to be a significant net cost or benefit as well as the categorisation of the impact (ie are the impacts incremental?).

2.1. Direct costs and benefits of the guidance

We identify and analyse direct impacts of the guidance in the form of familiarisation with the guidance itself and the good practice examples and recommendations below. However, it is important to note at the outset that direct incremental costs of the guidance are limited in that many of the requirements set out in the guidance are part of existing legislation that organisations and those engaging in direct marketing activities are already obliged to abide by.

2.1.1. Familiarisation

Organisations are expected to familiarise themselves with the guidance, although the extent of familiarisation will differ by organisation.

⁴⁰Further discussion on direct and indirect impacts can be found in: Regulatory Policy Committee, [RPC case histories – direct and indirect impacts \(2019\)](#).

Cost-benefit analysis

Costs

Organisations will incur a direct cost as a result of the introduction of the guidance because of the time taken to read and become familiar with it. These are referred to as familiarisation costs.⁴¹ It contains guidance for all organisations processing personal data for the purposes of direct marketing. However, it may not be necessary for all organisations to familiarise themselves with the whole guidance, particularly while it is guidance rather than a code of practice. For example, this may be the case for smaller organisations that undertake lower risk processing.

The indicative familiarisation costs are estimated to be between £51.6 million to £75.1 million, using the information available on the advertising and marketing industry and the likely time taken to read it. However, this is only to indicate the scale of this impact. It is not possible to accurately estimate the number of organisations or individuals that would need to familiarise themselves with the guidance.

It should also be noted that the guidance and materials produced will remain under review with the potential for further supplementary or issue specific guidance to lessen the load on organisations in terms of familiarisation costs. This means any estimates of the costs could be an overstatement at this point. There are further details of the method used to estimate familiarisation costs in [Annex A](#).

Benefits

The direct benefits to organisations of becoming familiar with the guidance are that it:

- helps them to understand their existing legal obligations under UK data protection law and PECR;
- helps them to comply with these obligations effectively;
- helps them win trust from individuals and clients;
- reduces the potential harm to individuals; and
- increases confidence to process data responsibly (discussed further under indirect costs and benefits in section 2.22.2).

Categorisation of impact

The original rationale for the guidance was in meeting s122 DPA 2018 to produce a code and the intention is still for the guidance to form the basis for a

⁴¹ For guidance on familiarisation costs, see: BEIS (2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776507/Business_Impact_Target_Statutory_Guidance_January_2019.pdf.

code. The impacts associated with familiarisation are a result of the production of the guidance itself which in turn is a result of the requirements of s122 DPA 2018. As the guidance provides good practice as well as practical guidance, it could be said that s122 of DPA 2018 enables some judgement about the scope and length. However, as s122 is explicit in requiring the Commissioner to provide practical guidance on legislation as well as good practice guidance such that the Commissioner considers appropriate, this provides a broad scope for the guidance. Although there is some discretion implied in s122 of DPA 2018, it does not necessarily follow that discretion implies incrementality. A similar assessment was also made for the impacts of familiarisation of the Age-Appropriate Design Code⁴², data sharing code⁴³ and draft journalism code.⁴⁴

While the assessment acknowledges that the issue of attribution here is complex, it is assumed that even where elements of the guidance could be deemed incremental, these are limited and likely to be balanced by the benefits to organisations in terms of regulatory certainty and greater ease in complying with legislation, particularly when taken in aggregate.

The impacts of familiarisation associated with the guidance are therefore considered to be an inevitable consequence and therefore an impact of s122 of the DPA 2018.

2.1.2. Specific elements of the guidance

We have outlined the key parts of the guidance below. We then assessed the potential for incremental costs or benefits to organisations and other affected groups.

Identifying direct marketing

The first step for organisations is to consider if what they want to do is direct marketing. This is important so that all the relevant rules can be followed. The guidance explains how the law defines direct marketing. It also makes clear that direct marketing is wider than simply sending direct marketing messages and can also include the activities that lead up to, enable or support such sending.

The guidance also provides good practice advice to help organisations decide if what they want to do is direct marketing. If what an organisation wants to do is not direct marketing then the guidance does not apply to them.

⁴² ICO (2021): <https://ico.org.uk/media/about-the-ico/documents/4018652/draft-economic-impact-assessment-202110.pdf>.

⁴³ ICO (2021): <https://ico.org.uk/media/2619796/ds-code-impact-assessment-202105.pdf>

⁴⁴ ICO (2020): https://ico.org.uk/media/about-the-ico/documents/2617988/aadc-impact-assessment-v1_3.pdf

Planning direct marketing

A key area of the guidance is that organisations plan their direct marketing before they start. This includes taking into account what type of information they want to use and what direct marketing activity they want to use it for.

Not planning properly can cause negative impacts to the organisation, such as non-compliance which harms their reputation or leads to enforcement action. It can also cause negative impacts to people, for example they receive nuisance or unwanted direct marketing. All of which can be prevented if organisations take time to plan their direct marketing.

The guidance provides help to organisations to work through the things they must consider when planning their direct marketing as well as good practice.

Collecting contact details

The guidance covers how to collect contact details and generate leads for direct marketing. It reminds organisations that people must be told that they want to use personal data for direct marketing. It also provides guidance on what organisations need to consider if they want to get people's information from other sources or create new information on people based on what they think they know about that person.

Practical advice is also provided to organisations on what they could consider to ensure their compliance before they buy information to use for direct marketing from other sources.

Respecting people's preferences

The guidance contains practice advice to help support people's rights and preferences in regard to direct marketing.

It promotes the use of suppression lists as a way that organisations can ensure that they continue to respect the wishes of those people who don't want their information used for direct marketing.

Cost-benefit analysis

Costs

The key elements of the guidance set out above are not additional obligations or impositions over and above existing legislation and what would be required generally to comply effectively with the legislation. The guidance is not overly prescriptive and it is clear where there are steps or considerations that may be helpful. The guidance also takes steps to make it clear what is a legal requirement and what is good practice.

Where organisations perceive that there are additional obligations or burdens, it is likely that there were existing issues with compliance. In these limited instances, organisations may need to implement additional measures or restrict

activities. However, the costs of these will be significantly outweighed by the benefits of improved compliance both to the organisations themselves and also to wider society. This impact is to some extent an implicit and inevitable aspect of the guidance's function because it exists to improve compliance.

Benefits

The greater clarity provided by the guidance is likely to benefit organisations through increased regulatory certainty and efficiency. This in turn is likely to reduce some of the costs associated with compliance or non-compliance. For example, better compliance may reduce costs incurred through legal challenges.

The specific parts of the guidance we have highlighted should also help the ICO to review compliance and investigate where necessary.

Categorisation of impacts

The original rationale for the guidance was in meeting s122 DPA 2018 to produce a code and the intention is still for the guidance to form the basis for a code. The impacts described above are a result of the statutory requirement within section 122 of DPA 2018. We are required to develop a code that supports the understanding of the legislation and good practice when personal data is processed for direct marketing. Therefore, the potential for incremental impacts is limited and the direct impacts of the guidance are assessed as neutral.

2.2. Indirect costs and benefits of the guidance

2.2.1. Costs

Although it is not possible to rule out indirect costs, it is difficult to identify any that are likely to bring about significant indirect impacts that are incremental to the guidance.

Additional restrictions or burdens (perceived or actual) could change the way some direct marketing activity is conducted and reduce some of the higher risk types of activity which could have knock-on effects for parts of the economy that rely on it. However, we do not consider that the guidance places any significant restrictions (or indeed freedoms) that go over and above existing legislation and what would generally be reasonable to comply effectively. As such, there is no substantive evidence of indirect costs.

2.2.2. Benefits

The indirect benefits of the guidance are primarily that it is likely to increase confidence and regulatory certainty. In turn, increased compliance is likely to lead to a reduction in the risk of harm to individuals when personal data is used for direct marketing.

Increased confidence

There is a high degree of uncertainty around impacts related to increased confidence. It is not possible to make a robust estimate of how incremental these impacts are.

The guidance will provide greater regulatory certainty and clarity because it is tailored specifically to the context of direct marketing. It is therefore likely to increase confidence within the industry generally. This will support those processing personal data for the purposes of direct marketing, particularly in circumstances where there may be more uncertainty about how to balance the benefits of efficient direct marketing and privacy rights.

Increased accountability may result in higher public trust levels. This may reduce chilling effects where people avoid engagement with products and services through fear of harm. This is particularly relevant to those with less knowledge of data protection issues or harder-to-reach individuals and groups. Direct marketing, and its associated benefits, rely on engagement and the willingness of individuals to share personal data that enables marketing to be targeted appropriately.

Increased regulatory certainty and confidence may result in more consistent understanding and application of the law across organisations. The guidance is a free-to-use resource by the data protection regulator that is tailored specifically to this sector's needs. This includes guidance tailored specifically for smaller organisations. This may increase competition and may also support smaller organisations particularly to participate more fully. Additional confidence may also result in innovation and economic growth.

Reduction of data protection harms related to direct marketing

As illustrated in Section 11.1.3, data protection harms may occur when personal data is processed for the purposes of direct marketing. Although the harms presented do not necessarily point to specific areas of non-compliance, the examples provided do correlate to key principles of data protection law.

The guidance is likely to contribute to reducing the risk and severity of the types of harms we have identified in this assessment and, where relevant, would serve to reduce negative distributional impacts. Even a small contribution to minimising harms would be helpful, in view of the potentially widespread damaging consequences for individuals.

The guidance encourages organisations to demonstrate accountability throughout, which is a key data protection principle introduced by the UK GDPR. There are benefits to putting in place appropriate, risk-based data protection measures and being able to demonstrate this. These are that organisations manage risks and harms associated with the processing of personal data. In turn, this increases confidence, both within and outside the industry.

Categorisation of impact

The guidance is likely to offer significant indirect benefits to society. This is because it is likely to provide greater regulatory certainty, increase confidence, and reduce harms. These beneficial impacts are judged to be incremental to the guidance.

However, it is difficult to draw firm conclusions about the likelihood and scale of the guidance's indirect benefits. This is because the indirect impacts are often intangible, vary according to the circumstances and depend on behaviour change.

2.3. Overall assessment of direct and indirect impacts

The direct and indirect costs identified in this assessment are generally judged not to be incremental. This is primarily because of the terms of the statutory requirement to produce the guidance and the need for organisations to comply with the legislation.

It is difficult to quantify evidence on costs. However, there is limited potential for incremental costs, in view of the legislative background to the guidance and the steps taken by the ICO to produce it. This also means there is limited potential for distributional impacts, although it is not possible to confirm this with the available evidence.

We consider that the guidance is likely to have some significant indirect incremental beneficial impacts. This is due to increased regulatory certainty, confidence and reducing the risk and severity of harms in the context of data protection and direct marketing. However, it is difficult to draw firm conclusions about the likelihood and scale of these benefits, which largely depend on behaviour change.

Overall, any costs associated with the guidance are considered to be significantly outweighed by the incremental societal benefits that the guidance may produce. These benefits align well with specific policies and complement existing industry codes.

Annex A: estimating familiarisation costs

This annex sets out the approach taken to estimating familiarisation costs for the guidance. A similar approach was taken for the impacts of familiarisation of the Age-Appropriate Design Code, data sharing code and draft journalism code.⁴⁵

As part of developing the guidance, the ICO sought to ensure maximum clarity and readability while still providing the necessary information. In addition to the core guidance, guidance for small and medium enterprises (SMEs) was developed to make the guidance more accessible to this audience.

Cost of reading the guidance

The familiarisation costs have been estimated in line with government guidance. This includes best practice on estimating reading time and implementation costs for organisations.^{46, 47} The reading time for each document is estimated using the word count, a measure for how easy it is to read each piece of guidance and the average words per minute that can be assumed for different levels of reading ease from government guidance.⁴⁸ This is provided in Table 3 below.

Table 3: Estimated reading time for direct marketing guidance

Element of guidance	Word count	Fleisch reading ease score	Assumed words per minute	Estimated reading time (hr:min)
Direct marketing Guidance	19,453	48.6	75	4:19
Small and Medium Enterprise guide to direct marketing	1,516	57.6	100	0:15

Source: [BEIS Business Impact Target Appraisal of Guidance](#), ICO analysis.

⁴⁵ ICO (2021): <https://ico.org.uk/media/about-the-ico/documents/4018652/draft-economic-impact-assessment-202110.pdf>; ICO (2021): <https://ico.org.uk/media/2619796/ds-code-impact-assessment-202105.pdf>; ICO (2020): https://ico.org.uk/media/about-the-ico/documents/2617988/aadc-impact-assessment-v1_3.pdf.

⁴⁶ BEIS (2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776507/Business_Impact_Target_Statutory_Guidance_January_2019.pdf.

⁴⁷ Regulatory Policy Committee (2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827926/RPC_short_guidance_note_-_Implementation_costs_August_2019.pdf.

⁴⁸ BEIS (2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776507/Business_Impact_Target_Statutory_Guidance_January_2019.pdf.

The impact of familiarisation on organisations can be monetised using data on wages from the ONS Annual Survey of Hours and Earnings (ASHE).⁴⁹ Assuming that the relevant 'occupational group' is 'managers, directors and senior officials', median hourly earnings (excluding overtime) for this group is £22.01.

This hourly cost is uprated for non-wage costs using the latest figures from Eurostat and in line with Regulatory Policy Committee guidance,⁵⁰ resulting in an uplift of 22% and an hourly cost of £26.84. We then use this hourly cost and the simplifying assumption of one person being responsible for familiarisation in each organisation⁵¹ to estimate a cost for reading each document.

Table 4: Estimated cost of reading the guidance

Element of guidance	Estimated cost of reading
Direct marketing guidance	£116.00
Small and Medium Enterprise (SME) guide to direct marketing	£6.80

Source: ICO Analysis; [RPC 2019 Guidance on Implementation Costs](#). *cost rounded to nearest £0.10.

Organisations or individuals in scope

The organisations covered in the analysis of familiarisation costs are mainly businesses and charities but it may also be applicable to some public sector organisations.

The Department for Business, Energy and Industrial Strategy (BEIS) Business Population Estimates states that there are 5.71 million organisations in the UK economy.⁵² The assessment uses the make-up of these by size and sector to inform exposure to direct marketing. The organisations that make up this total are shown in Table 5 below.

Table 5: Organisations by organisation type

Organisation type	Number of organisations (millions)
Private sector organisations	5.51

⁴⁹ ONS (2022): [Annual Survey of Hours and Earnings](#), table 10_SOC10 and Eurostat (2022): https://ec.europa.eu/eurostat/statistics-explained/index.php/Hourly_labour_costs.

⁵⁰ Regulatory Policy Committee (2019):

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827926/RPC_short_guidance_note_-_Implementation_costs_August_2019.pdf.

⁵¹ While there may be one individual responsible for understanding the guidance for multiple organisations or multiple individuals in one organisation, the absence of data makes a precise estimate overly cumbersome to come by, this simplifying assumption is therefore deemed appropriate.

⁵² BEIS (2022): <https://www.gov.uk/government/statistics/business-population-estimates-2022>.

Charities	0.19
Public sector organisations	0.01
Total	5.71

Source: BEIS (2022): <https://www.gov.uk/government/statistics/business-population-estimates-2022>, ICO analysis.

We make broad assumptions about which document and how much of each document a typical organisation would be expected to read based on likely exposure to direct marketing privacy risks. These assumptions provide us with an indicative average of familiarisation costs. This is intended to be indicative and we recognise that within these broad groups, organisations will have specific needs and therefore read more or less of this guidance. To reflect the uncertainty, we have provided two scenarios to give an upper and lower end estimate of the likely familiarisation costs. Table 6 below shows the guidance assumed for each risk category in each scenario.

Table 6: Assumed guidance read by each privacy risk exposure category by scenario

Scenario	Risk exposure	Relevant guidance	Estimated cost per organisation
Lower-end	High	Direct marketing guidance	£116.00
	Medium	SME guide to direct marketing	£6.80
	Low	SME guide to direct marketing	£6.80
Higher-end	High	Direct marketing guidance	£116.00
	Medium	Halfway between high and low	£61.40
	Low	SME guide to direct marketing	£6.80

Source: ICO analysis.

Private sector organisations

There are 5.5 million private sector organisations in the UK.⁵³ As well as for profit firms, this groups includes some charities, community groups and social enterprises who have registered as businesses with Companies House.

⁵³ BEIS (2022): <https://www.gov.uk/government/statistics/business-population-estimates-2022>

As illustrated in Table 7 below, the proportions of UK businesses that process or collect personal data from sources other than employees varies by business size.

Table 7: Businesses which hold personal data other than employee data

Business size (number of employees)	Percentage of businesses
Sole trader (zero employees)	63%
Micro and small (1 to 49 employees)	64%
Medium (50 to 249 employees)	79%
Large (250+ employees)	92%

Source: [DCMS Business Data Survey 2022](#), ICO analysis.

Applying the proportions from Table 7 to the 5.5 million private sector organisations in the UK by size, results in an estimated total of 3.5 million private sector organisations that hold personal data other than employee data. This adjustment was not applied to charities or public sector organisations as there is no data available on them specifically.

For the purpose of this analysis, we make the simplifying assumptions below. It should be noted that this will not apply to each and every organisation described below and is only to help simplify our analysis.

- Businesses that do not process or collect personal data are not able to engage in direct marketing.
- Due to their size and relative lack of labour, sole traders would engage exclusively with SME guide to direct marketing. For all other businesses, exposure to privacy risks from direct marketing will determine the extent of engagement with the materials.

We determine sectoral risk as set out in Table 8.

Table 8: Private sector exposure to direct marketing privacy risks by sector

Sector	Risk exposure	Justification
Agriculture, Forestry and Fishing	Low	Mostly business-to-business marketing so unlikely to involve much personal data
Mining and Quarrying;	Medium	Mostly business-to-business marketing so unlikely to involve much personal data in mining and

Utilities		quarrying; utilities likely to hold personal data
Manufacturing	Low	Higher proportion of business-to-business marketing so likely to involve less personal data
Construction	Low	Mostly business-to-business marketing so unlikely to involve much personal data
Wholesale and Retail Trade including auto-repair	Medium	Likely to hold some personal data and engage in direct marketing although more likely to be involved in business-to-business marketing
Transportation and Storage	Medium	Likely to hold some personal data and engage in marketing but less likely to include highly sensitive data.
Accommodation and Food Service Activities	Medium	Likely to hold some personal data and engage in direct marketing but less likely to include highly sensitive data.
Information and Communication	Medium	Likely to hold large amounts of personal data
Financial and Insurance Activities	High	Likely to hold and use large amounts of personal data for direct marketing
Real Estate Activities	High	Likely to hold and use large amounts of personal data for direct marketing
Professional, Scientific and Technical Activities	High	Sector includes marketing and advertising agencies who are likely to hold and use large amounts of personal data for direct marketing
Administrative and Support Service Activities	Low	Mostly business-to-business marketing so unlikely to involve much personal data

Education	Medium	Likely to hold personal data. Some organisations are likely to regularly engage in direct marketing, for example universities asking alumni for donations.
Human Health and Social Work Activities	High	Private sector likely to hold and use large amounts of personal data for direct marketing
Arts, Entertainment and Recreation	High	Likely to hold and use large amounts of personal data for direct marketing
Other Service Activities	Medium	Unknown, mid-point assumed

Source: ICO analysis. The risk exposure is based on professional judgement.

Charities

We believe that direct marketing plays a significant role for charities in terms of income generation.⁵⁴ We assume that charities with higher incomes are more likely to need to engage with more of our guidance.

Table 9: Charity sector exposure to direct marketing privacy risks by sector

Annual income band	Risk exposure
£0 to £100,000	Low
£100,000 to £500,000	Medium
£500,000 and over	High

Source: ICO analysis. The risk exposure is based on professional judgement.

Public sector organisations

We believe, in general, public sector organisations are less likely to extensively engage in direct marketing. We have assumed that larger organisations are more likely to market their commercial services alongside their primary functions and assigned exposure accordingly.

⁵⁴ Charity Commission, available at: <https://register-of-charities.charitycommission.gov.uk/sector-data/charities-by-income-band>, accessed 2nd May 2022

Table 10: Public sector exposure to direct marketing privacy risks by sector

Number of employees	Risk exposure
0 – 499	Low
500 +	Medium

Source: ICO Analysis. The risk exposure is based on professional judgement.

Organisations in scope

After excluding businesses that do not hold personal data other than that of their employees, and applying the exposure to direct marketing, we arrive at the estimates of organisations in scope by exposure level in Table 11 below.

Table 11: Organisations in scope

Risk exposure	Number of organisations in scope (millions)			Total
	High	Medium	Low	
Private	0.23	0.40	2.86	3.49
Charity	0.01	0.02	0.15	0.19
Public Sector	–	0.00	0.01	0.01
Total	0.24	0.43	3.02	3.70

Source: ICO Analysis.

Estimated familiarisation cost

After categorising each type of organisation by their privacy risk exposure category, we grouped them together and applied the appropriate familiarisation cost per organisation as detailed above. In summary, we believe that the familiarisation cost to the UK economy to be between £51.6 million and £75.1 million.

Table 12: Lower end estimate of familiarisation costs

Risk exposure	Organisations (millions)	Estimated cost per organisation	Total cost (millions)
High	0.24	£116.00	£28.2
Medium	0.43	£6.80	£2.9

Low	3.02	£6.80	£20.5
Total	3.70	£14.00	£51.6

Source: ICO Analysis.

Table 13: Upper end estimate of familiarisation costs

Risk exposure	Organisations (millions)	Estimated cost per organisation	Total cost (millions)
High	0.24	£116.00	£28.2
Medium	0.43	£61.40	£26.4
Low	3.02	£6.80	£20.5
Total	3.70	£20.30	£75.1

Source: ICO Analysis.