Deloitte welcomes the opportunity to comment on the *Direct Marketing Code Draft Code* published by Information Commissioner's Office (ICO) on 8 January 2020.

General points

1. We would appreciate some further clarification and specificity in the guidance around B2B marketing (where we mostly work). There may be a distinct difference in the "harms" that may occur to individuals in a business to consumer relationship as opposed to a business to business relationship.

2. We'd appreciate more detail and specificity when it comes to B2B application of the rules, and use of legitimate interests as our lawful basis. Much of the content here revolves around situations of consent.

3. We think it'd be worthwhile focussing some of the language in the document, so there's no room for misinterpretation. As an example (on page 7), the guidance states "You will be caught by the direct marketing rules…" It may be clearer to say 'covered' or 'you need to comply with'.

4. We feel it'd be worth explaining exactly which organisations are covered by this guidance up front. We have read this as 'anyone who markets' but are fairly developed in our thinking and understand concepts such as 'data protection by design'. We wonder if smaller businesses are in the same position however, which may make this document feel daunting and challenging to navigate. Would there be any value in adding a decision tree/similar to help guide businesses to the applicable portions for them?

Specific points

1.   Section on online advertising and new technologies

   a. Page 87 talks about observed and inferred data and the need to be transparent with data subjects. We are not aware of any way that we can collect such data via the platforms we use for social media (most notably LinkedIn and Facebook), therefore, have no opportunity to be transparent (by way of a privacy notice/similar) about our processing as it's not functionality that exists.

   b. Where we use targeted advertising on social media platforms, we are not collecting any data from this. The data subject needs to be aware of how their activity has enabled the social media platform to process their data, and how they have addressed an advertisement to them. As a marketer using such a facility, we have no control over these elements.

   c. Page 88 talks about cookies used for direct marketing purposes. Can it be made clearer whether this is cookies on our own website, or the cookies used on social media platforms? If we market through social media platforms, we have no control over cookies they use on their own sites.

   d. We'd appreciate clarification on whether there's any specific guidance on the use of insight tags? As far as we're aware they have no functionality to be explicit from the marketer's side, but perhaps they do from the point of view of the social media platform, but equally we receive no PII from these.

   e. Page 91, second complete paragraph ends 'you need to be very clear…'. We weren't sure who we were being clear with (the data subjects?) and how? This paragraph feels like it needs some expansion.

f. Page 92, asked that we exclude people on our suppression list from marketing on social media. Unfortunately the social media platforms do not provide functionality to enable us to exclude individuals from our advertising, as this advertising is based on the social media platform's analysis of their subscribers' behaviour. We don't see the personal data at all in this scenario. We'd recommend that the platform provides more detailed information to the data subject on why they are receiving certain advertising, allowing them to opt out via the platform/tailor their advertising preferences accordingly. Obviously if we ever did run a list-based campaign, we would exclude anyone on our suppression list.

g. Page 53 also states: "an individual may want as many people as possible to read their social media post but that does not mean they are agreeing to have that data collected and analysed to profile them to target your direct marketing campaigns. Likewise just because an individual's social media page has not been made private does not mean that you are free to use their personal data for direct marketing purposes". We want to make sure it's clear that the way the platforms operate means that we don't collect their personal data (not on the platforms we use) for marketing. Any advertising is targeted by the social media provider, based on parameters we set. Where we utilise functionality such as forms to collect information from interested parties, we use appropriate data protection measures such as privacy notices.

h. Overall, when it comes to online advertising and new technologies, we'd like to see dedicated guidance produced for the technology/platform providers themselves (such as Facebook and LinkedIn), and for data subjects on how they navigate the use of their data on such sites.

2. **Working collaboratively with other businesses**

a. There are many situations where we work in conjunction with another organisation to market (ie to host an event, or produce a publication, or organise a conference) however this joint-working arrangement doesn't feature greatly in the guidance. We'd be interested to hear if there are any particular regulatory considerations to take into account when it comes to how data is processed between multiple bodies.

Is the draft code clear and easy to understand?

☐ Yes

☒ No

If no please explain why and how we could improve this:

> See our General Points 3 and 4 above, regarding use of language and the ability of organisations – particularly smaller ones – to appreciate the content in the document.

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?

> We'd appreciate greater detail on B2B marketing, and further clarification per our Specific Points above.
>
> If there are other relevant guidances produced regarding social media and the division of responsibility across the marketer, the platform, and the data subject, we think this should be more clearly referenced.

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:

We'd like to see more coverage of the potential harms to the corporate subscriber in the B2B marketing environment.

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:

See point 4 of our General Points, suggesting a decision tree/similar structure to signpost relevant content.

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?

None, barring points made initially in this document.

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 organization

☐   Other

Please specify the name of your organisation:

Deloitte

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:

Direct Marketing Association

Direct Marketing Association

Thank you for taking the time to complete the survey