

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:

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?

In places more detail is required to enable organisations to ensure compliance with some elements of the code:

The code makes it clear that all processing activities leading up to a marketing communication would constitute direct marketing. More detail about what the ICO considers is reasonable to give customers, in order to meet the GDPR standard of consent is necessary. For example, would including 'all processing leading up to the marketing communication' be acceptable or is the expectation that all processing activities should be listed/ read out to the customer over the phone?

There is the potential to significantly extend call durations and online customer experiences. The challenge will be to convey the necessary information in a clear, concise and consistent way without causing customer annoyance or confusion. Feedback from our customers indicates that they do not want to be given too much information, particularly where consent is obtained over the phone. In a recent survey\* asking a mix of Saga members and enquirers about companies they've been in contact with, a third felt that the amount of information they received from companies now was about right. Over half of those surveyed felt having more information read over the phone would take too long - they just wanted to get on with the reason they called. Furthermore, over half also felt that signposting online where information could be read at their own time/ pace would be beneficial. Some guidance around how much information can be signposted to a detailed privacy policy and how much should be explained to the individual at the point of contact would be welcome.

Where there are gaps in the guidance, for example where the line is drawn between incentivising consent and some loyalty schemes being permissible, are organisations expected to decide this themselves and document their justification and if so, what is the outcome where the ICO may not agree with the justification?

The guidance on how long it is acceptable to process information for direct marketing purposes is welcome, further detail about how long information can be relied upon under the legitimate interest lawful basis is also needed.

\* Saga survey conducted between 28<sup>th</sup> February and 3<sup>rd</sup> March 2020, asking Saga members and enquirers how they felt about the way companies generally handle their data and privacy.

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:

For organisations that rewards customers with offers and discounts under a loyalty scheme further guidance about ensuring this is compliant with the direct marketing code is needed.

In addition, the guidance states that where a joint marketing activity is carried out, it will need to ensure that both parties have consent. Clarity is required about whether the organisation needs a separate opt-in consent for both parties.

The good practice recommendation is that all marketing should be carried out under the lawful basis of consent. The practical implications for organisations who continue to use legitimate interest as a lawful basis ought to be discussed in the code.

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:

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

It's essential that businesses provide the right balance of information to customers. In our Saga survey, over half of responders felt that when they spoke to any call centre, the information read to them over the phone about the data collected, used etc. took too long.

In addition, there are financial implications for businesses to provide more and more information to its customers, so more detail about how the customer and organisation's interests can be balanced and a compliant outcome arrived at should be provided. This could also have an impact on innovation as not all marketing activities and practices may be envisaged at the point consent is collected and so this should be considered and set out in the code.

The guidance is vague in some areas using terminology such as, 'it is likely that...' in practice what does this mean for organisations that have determined that an activity can be carried out compliantly?

## 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:

Saga Group plc

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:

A third-party newsletter

Thank you for taking the time to complete the survey