

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](#).

## Questions

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:

There are many references to the obligations of third parties for specific direct marketing activities. The draft code conveys that appropriate due diligence should be performed but could be enhanced by providing additional examples in the same format of the example boxes that are scenario based. These could include review of policies and procedures, and evidence of compliance to timelines for responding to preference management requests. The draft code would be used by direct marketers but will also be used by third parties to understand their obligations to their clients so clarifying expectations would help both audiences.

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 draft code does cover direct marketing and channel marketing expectations but could provide greater clarity on key concepts within direct marketing tied to third party relationships. Defining a third party in the glossary would distinguish third party entities from data processors, since both play a role in direct marketing compliance. Adding context and definitions of first party data, second party data, and third party data into the "Does the code apply to us" section would assist readers with understanding the nuances of those difference before evaluating the requirements of each type of marketing activity.

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:

Conducting due diligence in third party relationships requires an organisation to request information to assess specific control areas, review evidence, and may involve the testing of controls. Within the draft code, the due diligence focus areas are described at a high level, but do not contain examples on how to actually define and implement those due diligence requirements into a repeatable process. Providing examples of the types of artifacts that can be used to demonstrate compliance would assist both the direct marketing and the third party provider ensure that the right requirements have been addressed. The draft code provides sufficient examples of when the entity instigating the direct marketing should perform a DPIA but does not provide clarity on when a third party should perform a DPIA. A third party may not be in a position to share results of other DPIAs performed for other clients. Rather, the direct marketer would identify if their third party has a policy to define what triggers a DPIA for the services they are providing and provide sufficient evidence of such completion. Clarifying the roles and expectations of a third party for DPIAs is important, since the third party may need to assist the direct marketer in completion of the controllers' DPIA.

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:

References to the specific obligations of a third party are referenced throughout the guidance based on the type of direct marketing. The direct marketing entities that will be following this guidance will need to translate all of those references into their third party risk management program and create a set of due diligence standards to address direct marketing and on-line marketing third parties. Providing a separate section for third party requirements that addresses the expected governance model, due diligence and assurance would make it easier to find information in the draft code specific to third party obligations. This approach would also enable organisations to more easily compare requirements to Article 28 obligations.

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:

The draft code provides a very channel marketing centric set of frequently asked questions about each step in the direct marketing lifecycle. The draft code is written from an operational point of view on direct marketing execution. Direct marketing today relies on the development of predictive models that use the data attributes for modeling activities. Many organisations rely on third parties to define, manage and implement their models within systems. We have seen that conducting governance of the model itself is an element of due diligence that is required in the United States for specific products or services to ensure that the individual has not been harmed or treated unfairly. Providing references to guidance on this topic would be useful to include.

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

The draft code extends and clarifies guidance on the use and responsibilities for the direct marketing entity and including online advertising and new technologies. In marketing and selling channels, and in the digital landscape there can be a variety of third-party relationships that enable such activities. We would recommend adding clarity on roles and responsibilities for business models that include resellers, wholesalers, distributors which may be engaged in direct marketing. For the AdTech ecosystem, there are layers of third parties required to operate such environments. Adding clarity on expectations specific to engaging these providers and providing an example of appropriate terms and due diligence would be beneficial.

## About you

Q8 Are you answering these questions as:

(Please select the one that is most appropriate)

- 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 the organisation you are representing:

The Shared Assessments Program.  
Shared Assessments is a global membership organisation dedicated to developing best practices, education and tools to drive Third Party Risk Assurance through cross-industry collective intelligence and thought leadership.

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

Please specify:

**Thank you for responding to this consultation.  
We value your input.**