

University of Nottingham

Response to the Direct Marketing Consultation

The University welcomes the opportunity to provide feedback on the draft Direct Marketing Code of Practice, it is helpful that the guidance has been written in a plain English way with lots of useful examples.

There are however a number of points that the University feels it would be helpful to flesh out or that may need some clarification.

1. One of our main concerns is that under the new guidance the term Direct Marketing (DM) includes all processing leading up to enabling and supporting Direct Marketing. This would potentially mean that we need consent just to hold data rather than consent to send direct marketing as we do now  
The University has been following the guidance produced by CASE and we are led to believe that the ICO was consulted on this with no objections, so clarity around this would be welcomed.
2. Pg 6 - states we are unlikely to be able to justify tracing an individual to send them new details. Whilst UoN has agreed this for emails, this is adding in physical addresses. This effectively removes LI as a justification for processing there and we feel this section lacks detail on how we are to proceed with this.
3. Pg 15 - DM purposes includes "even if does not contain any sales or marketing material" could the University enquire about affinity calls which are relationship building and are carried out under LI, which is PECR Compliant.  
It is possible that there is little to no existing relationship with some people called.
4. Pg 17 - what types of communications are covered? Our concern is in regards to Social Media - we might make a first attempt via LinkedIn (or other Social Media) rather than email. Would there be a distinction made for professional marketing sites?
5. Pg 28 - the example given says that best practice is for the supermarket to check the opt-in/out status, of those it wishes to contact, via the opt-in/out status with the charity database. We wouldn't be willing to share data for this purpose and we wouldn't want to share data with companies who wish to raise funds on our behalf either.
6. Pg 31 which says "Good practice recommendation. Get consent for all your direct marketing regardless of whether PECR requires it or not."  
(*Good practice is defined by DPA 2018 as "such practice in direct marketing as appears to the Commissioner to be desirable having regard to the interests of data subjects and others, including compliance with the requirements mentioned in subsection (1)(a)"*). Are we to ignore any other lawful basis and assume only consent is good enough?
7. Pg 31 - how would we decide lawful basis? If you have a contractual basis, then DM can only be if in direct service of the contract, but according to the guide would also include profiling which would have implications for Alumni Relations in all

Universities.

8. Pg 37 - LIA on prospect research regarding invisible processing. This point does have direct tension with CASE guidelines which we have previously mention and is forming a lot of the work Universities have undertaken in terms of LIAs.
9. Pg 49 - 1 month time limit for PNs, this point conflicts with the Exemption under A14.
10. Pg 50 - No. of exemptions to S14, some examples: 'large amounts of data'. What is large amounts or extensive? This really needs a clearer definition.
11. Pg 58 - Can we use profiling to better target DM? What is 'intrusive profiling'? This needs to be better explained possibly with examples.
12. Pg 60 – Guide states that consent to email someone is specific to that email address even though PECR itself simply refers to consent to send email marketing.
13. Pg 62 which includes an example of a university updating its address records from something like the National Change of Address Database.  
You say "The University has infringed the GDPR by taking this action. Because it is unfair to trace individuals in these circumstances and it takes away their control. The university's legitimate interest in raising money does not outweigh the rights of the alumni to choose not to share their new address."  
This comes just after a section which described a similar practice and said "However in some cases individuals may express a wish for their updated contact details to be shared. For example, the individual may have moved house and made clear to a third party data source, by ticking a box or some other positive action, that they wanted the source to inform further third parties of the change of address."  
These are contradictory and should be clarified.
14. Pg 63 – We cannot assume that someone has forgotten to update us. You have stated that consent is specific to particular email address or number, although as per point 12 this defers from PECR. But what if they give you a new email via a paper form, but don't update preferences? Surely the assumption is that they want us to use it otherwise why would give it to us? By failing to use it, we could cause damage to a relationship the data subject actually wants and expects.
15. Pg 68 - failure to opt out is not consent, but if consent is already gained, then not opting out is indication they're happy with the calls. (TPS specific). This section seems to be at odds with the TPS's own guidance on its website.
16. Pg 69 - TPS acting as a general objection we feel that this section is not well worded.
17. Pg 82 - Processing (not marketing) does not require consent if PECR consent is not required for the DM i.e. dispute with how processing and DM are treated elsewhere (business).