

DATA PROTECTION AND MARKETING

This document sets out the requirements for the collection, handling, storage and destruction of personal data used in marketing activities.

The University must ensure that handling of personal data used for marketing activities is done in accordance with our obligations under the General Data Protection Regulation (GDPR) 2016, the Data Protection Act 2018, the Privacy of Electronic Communications Regulations (PECR) 2003, Article 8 of the Human Rights Act and all applicable privacy laws. The below instructions set out the actions required to ensure we can meet these obligations and offer guidance and advice on data protection compliance for marketing and fundraising activities.

This document should be read alongside the University Data Protection Policy.

WHAT IS PERSONAL DATA

Data protection law defines personal data as being:

Any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Personal email addresses containing a person's name contain personal data.

Business, organisational or corporate email addresses containing someone's name contain personal data.

Data that profiles an identifiable individual based on their online activity is personal data.

If you are collecting any of the above your use of that data will be subject to the below requirements.

WHAT QUALIFIES AS DIRECT MARKETING?

Direct marketing is the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals. **Direct marketing is not limited to advertising goods or services for sale.** It also includes promoting an organisation's aims and ideals. This means that the direct marketing rules in the GDPR and PECR will apply to the promotional, campaigning and fundraising activities of not-for-profit organisations, including charities and Universities. This will include the advertising of courses to prospective students, the advertising of events, activities or opportunities at the university, as well as communications soliciting fundraising, supporter engagement, and charitable donations, be that monetary or the giving of time or resources. Research surveys that also include any of the above will also be in scope.

WHAT IS NOT DIRECT MARKETING?

General and transactional communications, including those with current students, employees and contractors delivering our services are out of scope of these requirements. If you need advice please contact imps@reading.ac.uk

COLLECTING PERSONAL DATA FOR MARKETING PURPOSES - TRANSPARENCY

The GDPR requires that we do not collect more data than we need

When planning your marketing activities you should consider what personal data is required for your purposes. Do not collect any personal data that you do not have a need for. For example, do not ask for a date of birth or telephone number if you have no predefined purposes for it. You should not ask for contact details for channels you do not *intend* to use. If you are asking for personal information that people wouldn't reasonably expect to need to give for your purposes, but you have a legitimate purpose to ask for it, wherever possible explain what that purpose is. Do not make fields requesting personal data mandatory if they are not.

Avoid unnecessary duplication of personal data. If you need to make copies, ensure that these are minimised and that superfluous copies are deleted once no longer needed. This will also assist you in efficiently managing the marketing preferences of individuals.

The GDPR requires us to be clear on any differing purposes we use personal data for.

If you are collecting personal data for one defined purpose, and you intend to use that same data for another purpose, such as onward direct marketing activities, you should present these separately.

Example: You have a 'contact us with a query' field on your department website which asks for an email address. You receive the query, and respond to the query but then also add the enquirer's details to a list to be used for onward direct marketing.

In this example you have not advised the user of the additional marketing purpose or given them any control over whether they agree to be added to those lists.

You should instead make it clear that you would also like to use the information for direct marketing and give this as separate option to enable the person to have free choice over whether they provide their data for those purposes as well. You should explain clearly what those marketing activities involve, for example "sending you information about future events".

You must also ensure that you link to a Privacy Notice whenever you are collecting personal data. A Privacy Notice explains more about how that data is stored, who is responsible for it, and also their rights in respect of their data. If your webpage or manual data collection form that is collecting personal information does not link to the central University Privacy Policy please contact imps@reading.ac.uk

WHAT ABOUT CONSENT?

Unsolicited **electronic** direct marketing can only be done with consent. Unsolicited means any direct marketing that has not been explicitly asked for (solicited). Electronic includes, faxes, text messages, video messages, emails and internet messaging. This is a requirement of the Privacy of Electronic Communications 2003, however the GDPR standard of consent will apply.

WHAT ABOUT OPT-IN AND OPT-OUT?

Consent under the GDPR must be a clear *affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement*. Silence or inaction (where no affirmative action is taken) or not unticking a pre-populated 'I agree' box (where the consent would be ambiguous) will not suffice. Agreeing to receive direct marketing should not be tied into the conditions of receiving another service as the person has no way of freely giving their consent. Consent needs to be opt-in.

Example: You have a 'contact us with a query' field on your department website which asks for an email address.

You have also separately asked if they would like to hear more about future events and provide a clear and easy means for them to positively opt-in (consent) to this.

They are provided with a clear means to do this

Yes, please send me information about future events



It is good practice to advise the individual that they will be able to unsubscribe at any time

Again, you must also ensure that you link to a Privacy Notice whenever you are collecting personal data. A Privacy Notice explains more about how that data is stored, who is responsible for it, and also their rights in respect of their data. If your webpage or manual data collection form that is collecting personal information does not link to the central University Privacy Policy please contact imps@reading.ac.uk.

ARE THERE ANY EXCEPTIONS?

You can rely on an opt-out approach in some **very limited circumstances**. These are where:

- You obtained the contact details when the person bought something from us (a financial transaction or **sale** of goods or services took place) **AND**
- You gave them a clear opportunity to opt-out of further marketing communications at the point their details were collected **AND**
- You are marketing similar products or services **AND**
- You give them an option to opt out on **EACH** subsequent marketing communication

Example: You are processing a booking for a chargeable event and have collected an email address to send the confirmation to.

On the booking form or page you also advise the person that you would like to send them information about future events and provide a means for them to opt out if they would not like these communications.

You clearly explain how they can opt out of those communications.

"If you prefer not to hear about future events, please tick this box"



The above will not apply to any data that was obtained without a sale of goods or services (for example to attend a free event or request some information) or as part of any fundraising activities, supporter engagement, and charitable endeavours including those collected from Alumni.

IMPS would *recommend* that you take a positive opt-in approach to all marketing activities though if your activity does meet the opt-out approach requirements you can choose this if you wish.

WHAT ABOUT TELEPHONE DIRECT MARKETING?

You can make unsolicited direct marketing calls without opt in consent providing you have **not previously received an objection** to receiving marketing calls and have screened their number against the Telephone Preference Service (TPS). The TPS enables people to register their phone number to opt out of receiving direct marketing calls. Unless you have explicit consent to make marketing calls, you are not able to call anyone registered with the TPS. You must identify yourself (so not via a hidden number that will not be shown on a caller ID) and provide your name and contact address if requested.

There is also a Corporate Telephone Preference Service (CTPS) that you will need to screen against if making unsolicited direct marketing calls to businesses (see below section on Business to Business marketing).

You must honour any request to be removed from your telephone marketing lists promptly.

More information about the TPS can be found here:

<http://www.tpsonline.org.uk/tps/index.html>

The Campaigns and Supporter Engagement Office (CSEO) routinely screen against the TPS (and also the Fundraising Preference Service) so it is strongly recommended that you take advice from CSEO if you are planning unsolicited direct marketing campaigns for Alumni and supporters.

WHAT ABOUT POSTAL MARKETING?

You can send unsolicited direct marketing by post without consent on the basis that it is an activity in our 'legitimate interests' under the GDPR. **However** if you are relying on legitimate interests you will need to make an assessment of how those interests balance against the rights and freedoms (the privacy) of the recipients. Some things to consider are:

- Would the individual reasonably expect to receive postal direct marketing from you? Take into account the context in which you obtained their address and any existing relationship with them.
- Is the individual likely to feel they are receiving an excessive amount of mail marketing from you? Consider the frequency of your marketing communications.
- Is the nature of the marketing material appropriate and/or relevant to the individual? For example, sending a flyer about research developments in a particular area of health or in relation to certain medical conditions because the individual once took part in a related research study that promised anonymity may be relevant but not appropriate.

Data protection law does not apply to mail marketing sent to 'the occupier' at addresses, but using 'the occupier' if you know the name of the resident is not acceptable.

BUSINESS TO BUSINESS MARKETING

You do not need consent (opt in or opt out) to send unsolicited electronic direct marketing to businesses. This includes corporate or organisational email addresses for example Joe.blogs@anycompany.com. Business emails containing personal names are still personal data under the GDPR so you must still take into account the legitimate interests assessment (detailed in postal marketing), provide your contact details and should give a means on each email for them to unsubscribe or object to receiving the marketing. There is very little benefit in sending marketing to a person that does not want to receive it.

Sole traders are likely to qualify as personal contact details so the consent requirements will apply.

BOUGHT IN LISTS

There is nothing in the GDPR or PECR that dictates that bought in marketing lists cannot be used. However you will be responsible for ensuring that you have all the necessary consents above. Do not assume the company you buy a list from has these. Ask how they meet these requirements to ensure the lists are going to be useful to you. Bear in mind that for consent to meet the GDPR standard it needs to be specific. The fact that the list is drawn from people that registered for an HEI conference does not mean they consented to direct marketing from the University of Reading or Henley Business School. Ask questions of your suppliers; it is your responsibility to ensure you have those consents, not the list providers.

PERSONAL DATA NOT OBTAINED DIRECTLY FROM AN INDIVIDUAL

Personal data, including that held within email addresses, which is available online or via publically accessible sources, is still subject to data protection laws.

As part of the transparency requirements under the GDPR, if you are using personal data you have obtained from *somewhere other than the person it concerns*, you are required to inform the person you are marketing to of where you obtained their details at the point of first contact and in any case no later than 1 month from obtaining it. This will include where you have taken their email address from their work, organisational or institutional website, social media accounts, where you have obtained it via a bought in list or by using publically accessible registers.

There are very limited exceptions to this. Please consult the University Data Protection Officer if you have reasons you feel this is not possible. Please note, there is **unlikely** to be any exceptions in the below instances:

- It would feel awkward or it 'would feel strange' to say/you don't want to say
- You don't know what you might use it for yet
- You don't know where your bought in list provider got it from
- It would mean you would have to tailor each communication to cater for this

Seek advice if unsure.

RECORDING CONSENT

If you need consent you also need to keep a record of when it was given and what for. This can be a record you have made, for example, if someone consents to receive email direct marketing communications over the phone, you should have somewhere that you can record when they consented and what to but do not necessarily need a recording of the phone call. You will also need to record any information you provided as to what they would receive. IMPS will retain copies of any core Privacy Notices that are also linked to so we can reconcile against what additional privacy information would have been applicable at that time.

MARKETING ON LINE

General marketing banners or pop ups that will appear on a particular site irrespective of user are not covered by data protection laws. However, any targeted marketing based, for example, on an identifiable individual's browsing history, purchase history, or log-in information will be subject to the requirements of the GDPR.

Profiling of individuals includes *any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.*

Profiling can bring significant benefits for individuals, allowing more relevant and targeted online marketing. It can also be deemed to be privacy intrusive. It is therefore a requirement to ensure that any use of analytics or cookies is clearly explained to online visitors and that they are made aware of their rights. More information on analytics and cookies is provide in our University Privacy Policy and if you are undertaking these activities you must link to that notice.

Unsolicited electronic direct marketing consent requirements may extend to direct marketing via social media. **Solicited** communications do not require consent, so if someone has made their email available on a professional networking tool and made it very clear that they would like to be *contacted about job opportunities*, and we have one to offer, then this will be possible. However sending communications regarding something we want to sell or promote is not likely to be solicited and falls in scope of the regulations.

Note: The current European Directive that forms the basis for PECR is set to also be updated, becoming the EU E-Privacy Regulation. This may bring changes in respect of consent for direct marketing and use of cookies. It is not likely that this will take effect in the UK for some time and may be impacted by Brexit; more information will be made available in due course.

If you have any queries regarding online marketing please contact imps@reading.ac.uk

MARKET RESEARCH SURVEYS

Surveys sent for purely *market research* purposes are not subject to the rules for unsolicited direct marketing, however, this is only the case if the survey does **not include** any promotional or marketing material (as covered in the definition of marketing). You also cannot send a survey asking for contact details and then use these for marketing unless you have the necessary consents for the subsequent marketing and gave this option separately (see collecting personal data).

THE RIGHT TO OBJECT

Individuals have an absolute right to object to direct marketing by any means. If someone withdraws consent or objects to their data being used for direct marketing you must stop contacting them straight away. If you need to retain their details for the purposes of managing a suppression list (a 'do not contact list') this is permissible and sometimes required within customer relationship management (CRM) tools that send emails en masse or remotely.

RECORD RETENTION

You should have a process for reviewing your marketing lists. Whilst it is acceptable that you retain the personal information until the person unsubscribes or objects, this does not mean we can keep information indefinitely which would not be compliant with the principles of the GDPR. If an individual

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has not engaged with you for a significant period of time, you should consider proactively checking they still want to hear from you, or removing their details from your lists. Think quality, not quantity, when it comes to your marketing databases, keep them up to date, relevant and useful.

PRIVACY BY DESIGN

The means to provide purpose specific opt-ins, manage opt-outs, objections and preferences will be important. If you are procuring new CMS or marketing database tools, a question for your prospective supplier should be "how will your tool help us with meeting these obligations?" Factor in what you need to manage your marketing databases at the very initial stages of your procurement process. If a supplier cannot offer functionality to record preferences, consent, suppression lists or objections or if they have no easy way for you to minimise duplication of data, access data or delete data consider whether they are the supplier you want. Factor these requirements in when offered a seemingly inexpensive deal, though equally do not assume you should pay very high additional costs for functionality that is a need to have, not a nice to have.

You may also need to conduct a Data Privacy Impact Assessment. Please see [here](#) for more details.

WHAT ABOUT LISTS I ALREADY HAVE?

If you currently hold lists of contacts used for direct marketing activities, and have not already spoken with the IMPS team, please contact us for advice at imps@reading.ac.uk

FUTHER HELP AND RESOURCES

Information Commissioners Office:

Guide to PECR

<https://ico.org.uk/for-organisations/guide-to-pecr/>

Guide to Direct Marketing

<https://ico.org.uk/media/for-organisations/documents/1555/direct-marketing-guidance.pdf>

Guide to consent

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/>

Direct Marketing Association Code

<http://www.dmcommission.com/the-dma-code/>

Information Management and Policy Services (Data Protection Officer)

imps@reading.ac.uk

0118 378 8981

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