

<b>Title:</b> Direct Marketing Code of Practice <b>IA No:</b> <b>RPC Reference No:</b> <b>Lead department or agency:</b> DCMS <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 21/04/2016			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
	<b>Contact for enquiries:</b> Amanda Williams Amanda.williams@culture.gov.uk			
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
-£0.12m	-£0.02m	£0.0m	In scope	Qualifying provision

**What is the problem under consideration? Why is government intervention necessary?**

The Information Commissioner's Office (ICO) produces Direct Marketing Guidance to organisations, which provides them with guidance on the direct marketing rules under the DPA and Privacy and Electronic Communications Regulations (PECR). However, neither the DPA nor PECR imposes an obligation on organisations to have regard to the guidance, or establishes any consequences on an organisation or individual who fails to comply with the guidance. The non-statutory nature of the guidance has led to misinterpretation, and difficulty for the ICO in prosecuting firms that breach the direct marketing rules. Putting this guidance on a statutory footing will make it easier for non-compliant firms to be prosecuted.

**What are the policy objectives and the intended effects?**

Placing the ICO's Direct Marketing Guidance on a statutory footing would support a reduction in the number of unwanted direct marketing calls; and to make it easier for the Information Commissioner to take enforcement action against those organisations in breach of the direct marketing rules under the DPA and the PECR.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1. Do nothing  
The ICO will continue to fulfil its duty to produce Direct Marketing Guidance under its general duties to promote good practice in s51 DPA. There is no obligation for organisations to have due regard to the guidance.

Option 2. Put ICO guidance on a statutory footing (preferred option).  
This option would place a statutory duty on the Information Commissioner's Office to publish and keep under review a Direct Marketing Code of Practice.

<b>Will the policy be reviewed?</b> It will/will not be reviewed. <b>If applicable, set review date:</b> Month/Year					
Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope?		<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

**Signed by the responsible Minister :** Lucy Neville-Rolfe **Date:** 4 July 2016

# Summary: Analysis & Evidence

# Policy Option 1

Description:

## FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.12

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.0	0	0.1

### Description and scale of key monetised costs by 'main affected groups'

There will be some familiarisation and administration costs associated with firms understanding and changing their behaviours to comply with the guidance. This will equate two around two hours of an administrator's time.

### Other key non-monetised costs by 'main affected groups'

There could be an increase in the number of non compliant firms prosecuted for failing to comply with the DPA and PECR. However, costs to non-compliant firms do not count as direct costs to business.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

### Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised.

### Other key non-monetised benefits by 'main affected groups'

Putting the ICO's direct marketing guidance on a statutory footing will improve the standard followed by direct marketers, particularly as the improved enforcement powers create a disincentive to follow a lower standard. This could in turn reduce the number of nuisance calls made to UK consumers.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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The main assumption is that the amount of work required by firms by the new regulation will account to around two hours of an administrator's time.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.0	Benefits: 0.0	Net: 0.0	
			0.0

## **Supporting Evidence**

### **Problem Under Consideration**

The Information Commissioner's Office (ICO) already produces Direct Marketing Guidance under its general duties to promote good practice in s51 of the Data Protection Act (DPA). This provides organisations with guidance on the direct marketing rules under the DPA and PECR. However, neither the DPA nor PECR imposes an obligation on organisations to have regard to the guidance, or establishes any consequences on an organisation or individual who fails to comply with the guidance.

The current non-statutory status of the ICO's Direct Marketing Guidance has meant that in some cases Direct Marketing organisations have reinterpreted the Information Commissioner's guidance into their own guidance causing the point to be lost in translation, or in other cases the organisation has simply chosen to deviate from the Commissioner's view because they do not agree with it.

### **Rationale for intervention**

The Government wants to put the ICO's Direct Marketing Guidance on a statutory footing. This is part of a package of measures to tackle the growing problem of nuisance calls. Nuisance calls covers a range of different types of calls including those of a direct marketing nature, which are a major problem for consumers. Research has shown that unsolicited calls have left 9 million British adults feeling stressed or anxious, and a further 3.2 million adults afraid to answer the phone as a result<sup>1</sup>. More than 149,000 complaints about direct marketing calls were made to the Information Commissioner's Office (ICO) in 2014 (175,000 including text messages)<sup>2</sup>. The term 'nuisance calls' is often used in everyday language to cover both legitimate direct marketing calls (i.e. those made in accordance with the provisions of the PECR) and calls from non-compliant organisations and individuals (for example, those which ignore direct cessation requests).

### **Policy Objective**

Placing the ICO's Direct Marketing Guidance on a statutory footing would support a reduction in the number of unwanted direct marketing calls; and to make it easier for the Information Commissioner to take enforcement action against those organisations in breach of the direct marketing rules under the DPA and the Privacy and Electronic Communications Regulations (EC Directive) 2003 (PECR).

By way of a recent high profile example, as part of the recent Public Administration and Constitutional Affairs Committee's inquiry in Fundraising and the Charitable Sector, the Information Commissioner pointed out that the Institute of Fundraising (IoF) own guidance did not reflect the Information Commissioner's Direct Marketing Guidance in providing clarity that the direct marketing rules under the DPA and PECR did apply to the charity sector. The Commissioner noted that it was 'a matter of some disappointment that the IoF appeared to be resisting the reality that the direct marketing guidance did apply to the charity sector' (part 4, para 61 of the Inquiry's report).

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<sup>1</sup> Ware, E and Surtees, J (2013): Got their number: Ending the harm caused by nuisance calls and texts. From Stepchange - [www.stepchange.org](http://www.stepchange.org).

<sup>2</sup> <http://www.bbc.co.uk/news/uk-31616523>

## Description of options considered

### Option 1. Do nothing

Organisations will continue to ignore the ICO's direct marketing guidance, therefore making it difficult to convict individuals/organisations who rely on outdated consent to make direct marketing calls. This represents our counter-factual.

### Option 2. Putting the Information Commissioner's Direct Marketing Guidance on statutory footing (preferred option).

This is the preferred option. Currently, the Information Commissioner has a general duty to promote good practice under s51 DPA. Similar to s52A-E of the DPA that places a duty on the Information Commissioner to prepare and keep under review a statutory Code of Practice on Data Sharing, this option would see the Information Commissioner's guidance on Direct Marketing placed on a statutory footing, therefore leaving no ambiguity around the rules on direct marketing and third party consent.

## Monetised and non-monetised costs and benefits of each option

### Option 1.

This option would make no change to the regulatory framework and therefore has no impact on business.

### Option 2.

#### *Scope of Impact*

All members of the Direct Marketing Association (DMA), around 1,000 firms, already follow the ICO guidance so will be unaffected by the measure. Based on research by Brookmead Consulting,<sup>3</sup> which estimated that approximately 50% of calls provide CLI (a requirement of DMA membership), we estimate that there are approximately 2,000 direct marketing firms in the UK. Therefore, the number of firms in scope of this measure is the total number of direct marketers in the UK, minus the members of the DMA (2,000 - 1,000) = **1,000 firms in scope.**

#### *Cost to Business*

The DMA suggests that complying with the obligations in the ICO's Direct Marketing guidance would be relatively straightforward. There would be some familiarisation costs as firms read and understand the guidance. There would also be some administration costs - organisations would need to change their current guidance on direct marketing to reflect the ICO's direct marketing guidance; specifically on issues on third party consent. Some organisations may need to change their consent forms, for example, most of the insurance companies use pre-ticked opt in boxes when collecting customer data for marketing. This would have to change. The DMA believe the cost of removing the tick from the web forms is negligible.

In total, we estimate that the familiarisation and administration costs will equate to around two hours for an administrator. The average wage in the UK for an administrator is £9.20 per hour<sup>4</sup>. Using the standard cost model, we include an uplift of 30% to account for overheads<sup>5</sup>. Therefore, the total one-off cost to businesses will be  $£9.20 * 2 + 30% * 1,000$  (number of firms in scope) = **£23,920.**

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<sup>3</sup>This is from Brookmead's 2013 Select Committee submission - Brookmead "identified that around 48% of nuisance calls arrived without a diallable Caller-ID"

<sup>4</sup><http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-337429> Table 2.1a, assuming 40 hours a week

<sup>5</sup><http://www.oecd.org/gov/regulatory-policy/34227698.pdf>

### Public Sector Costs

The ICO estimates that they would face an additional impact of moving from voluntary guidance to a code of practice. This would be the requirement for work to be carried out by a Senior Policy Officer with support from a Group Managers. It is estimated that this work could take up to 50% of their working hours over 12 months, though hopefully less. This would include attending stakeholder consultations and follow up work to promote the guidance, the additional cost of which would be travel. The total cost to the ICO is therefore the sum of the staff costs, again including the standard cost model uplift: **£91,534** (£31,078 + £39,333 + 30% = £91,534).

The ICO believe that there will not be any additional enforcement costs as a result of the Direct Marketing Guidance becoming a statutory code of practice. However, if there were the impact would not be felt immediately, given that investigations take some time before leading to enforcement considerations before enforcement action. There is a possibility of the ICO requiring Counsels advice and drafting. Any cost impact could be balanced by improved compliance across the sector, which leads to less investigations and less fines and enforcement notices and appeals.

Lastly, there will be an initial cost of communicating the code and its requirements, which the ICO estimates to be £2,500 to do the essential elements such as printing hard copies and doing the basic communications handling. A more elaborate communications plan would cost the ICO between £67,500 and £70,000.

Annex A sets out these costs to the ICO in more detail.

### Impact on non-compliant firms

As the ICO's guidance becomes statutory, there may be an increase in the number of firms that are prosecuted for failing to comply with the now statutory guidance. However, any cost to these firms as a result of prosecution would be a direct result of failing to comply with a statutory obligation. Therefore, as set out in the Better Regulation Framework Manual, those costs are not counted as costs to business of this measure.

### Benefits

Putting the ICO's direct marketing guidance on a statutory footing will improve the standard followed by direct marketers, particularly as the improved enforcement powers create a disincentive to follow a lower standard.

The evidence shows that nuisance calls are a growing concern for UK consumers, with nearly 150,000 complaints made to the ICO in 2014. Improving the standard of marketing calls could reduce the number of nuisance calls made to consumers.

### Direct costs and benefits to business calculations

Cost to Business	£23,920
Public Sector Cost	£91,534
NPV (business NPV)	-£0.12m (-£0.02m)
EANDCB	£0.0m

Note: EANDCB on 2014 prices, 2015 present value. NPV on 2016 prices, 2016 PV base year over 10 years. From the Impact Assessment Calculator. For the EANDCB – figure is taken from the calculator and is too low to show at 1 decimal place.

## **Risks and Assumptions**

Our main assumption is that administrative and familiarisation burden on firms will equate to around two hours of an administrator's time.

## **Annex A: Breakdown of cost to the ICO**

The ICO estimates the costs associated with converting the direct marketing guidance into a statutory code are likely to be minimal.

Staff Costs: The work will be carried out by a Senior Policy Officer with support from a Group Managers. The Annual starting salaries for level E and F each are £31,078 and £39,333 respectively. It is estimated that this could take up to 50% of their working hours over 12 months This would include attending stakeholder consultations and follow up work to promote the guidance, the additional cost of which would typically just be travel (again minimal in the scheme of things). To these staff costs we apply the standard cost model uplift of 30%.

Consultation and promotion: The estimates are based on material production and marketing options for the code and associated key messages. The ICO would base their promotion and publicity campaigns targeting two main audiences. Firstly, organisations within the Direct Marketing sector who need to be made aware of the code and the obligations it places on them. Second, the public who are influenced and targeted by the output of the direct marketers. They may need to be made aware of the obligations that anyone targeting them with direct marketing would have to adhere to.

Audience one: DMA sector organisations. Assuming a 'standard' code of practice produced for online publication only, there's a lot of publicising that the ICO could do with three days of a level D Lead Communications Officer - about £300. Website, social media, video, blog and e-newsletter. The ICO's analytics show these are effective channels for raising awareness of ICO products and activities with target audiences. For example, the ICO's SME toolkit has been activated 17,204 times since Jan 28.

If the ICO wanted to achieve more awareness and reach into the different sectors within the direct marketing world, the ICO could consider a few additional options – eg: exhibition stands at relevant DMA sector shows, some paid for advertising in the relevant sector media, and some direct marketing. This would amount to circa 10 - 15K.

There could also be 'spin off' products that will help the ICO achieve their objectives – raise awareness, reinforce key messages and bring target audience back to the code of practice on the website. To achieve this the ICO would need another 10 to 15K. This would pay for a digital infographic, at-a-glance case stories, printed checklists, stickers, coffee mugs, tea towels etc.

The ICO would also consider making hard copies of the guidance available. There are additional costs associated with the established Parliamentary process and record keeping. For example, The Stationery Office (TSO) requires that a dozen copies be printed - which will cost around £ 900. The cost of a 'hard copy' run of say 10,000 would cost in the region of £13k.

Audience two: Public affected by the output of the DM sector. Potentially a huge task since this is most of the UK population over ten years of age.

The ICO proposes to use a Facebook advertising campaign to raise awareness of three key messages that outline the obligations direct marketers have toward consumers and a call to action – which might be click through to an infographic hosted on [www.ico.org.uk](http://www.ico.org.uk). Cost wise, the ICO thinks a 20K campaign would achieve reaching out to a huge potential audience, although a 10K campaign, when combined with some local media relations, could also be an option.

Enforcement: The ICO believe that there will not be any additional enforcement costs as a result of the Direct Marketing Guidance becoming a statutory code of practice. However, if there were then the impact would not be felt immediately, given that investigations take some time before leading to enforcement considerations well

before enforcement action. There is a possibility of the ICO requiring Counsels advice and drafting. On the other hand, any cost impact could be balanced by improved compliance across the sector, which leads to less investigations and less fines and enforcement notices and appeals.

Summary of costs to the ICO:

	<b>Must do</b>	<b>Could do</b>
Basic and essential communications for organisations	£300	
Initial print run 10,000 copies		£ 13,000
TSO set up	£900	
Marketing activity: <b>organisations</b>		£10-15,000
Marketing activity to raise public awareness of DM obligations in the code: Facebook		£20,000
MP and Citz advice offices: production and mail out flyer.		£5,000
Local media relations – Press Officer time	£300	
Lead Comms Officer time for production and publication etc	£1,000	
Other staff costs	£91,534	
<b>Total</b>	<b>£94,034</b>	<b>£67,500- £70,000</b>