

GUIDANCE:
Direct marketing



Direct Marketing – A Guide for Organisations

Introduction and Summary

'Direct Marketing' is an activity that is often central to, and can bring commercial benefits to, many organisations and businesses. Used properly, it can help engage current customers, attract future customers, and ultimately grow customer base.

However, it is an activity which involves using customers' personal information (also known as 'personal data') and if carried out badly it can be intrusive and a nuisance with the improper handling of personal data leading to distress and invasion of privacy. To avoid this, it is essential that direct marketing activities are compliant with [*The Data Protection \(Bailiwick of Guernsey\) Law, 2017*](#) ('the Law'), [*The European Communities \(Implementation of Privacy Directive\) \(Guernsey\) Ordinance, 2004*](#) ('the Directive') and other privacy-related legislation.

Below is clear guidance and some practical examples of how you can carry out, via any channel, direct marketing in compliance with the Law and other pertinent privacy related legislation.

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What is direct marketing?

Direct marketing is the communication, by whatever means, of marketing material to specific individuals or organisations.

Genuine market research does not count as direct marketing. A survey that includes any promotional material or collects details to use in future marketing campaigns, would have to adhere to adhere to the rules around direct marketing.

Routine customer service messages do not count as direct marketing – in other words, correspondence with customers to provide information they need about a current contract or past purchase (e.g., information about service interruptions, delivery arrangements, product safety, changes to terms and conditions, or tariffs). General branding, logos or straplines in these messages do not count as marketing. However, if the message includes any significant promotional material aimed at encouraging customers to buy extra products or services or to renew contracts that are coming to an end, the message includes marketing material, and the rules apply.

Marketing to individuals

Under the Directive, individuals are defined as individual consumers as well as sole traders and partnerships.

At a glance, the requirements of business to individual direct marketing include:

Type of Direct Marketing	What legislation applies?	Overview
Live calls	<p><i>The Data Protection (Bailiwick of Guernsey) Law, 2017.</i></p> <p><i>The European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004.</i></p>	<ul style="list-style-type: none"> • The business caller must provide the ability to opt-out. • The business caller must screen against the UK's Telephone Preference Service (TPS). • The business must screen against their own 'do not call' lists. • The business / caller must display telephone number. • The business / caller must say who is calling and if requested give contact address or free phone number. • Where processing personal data - must comply with the Law e.g., ensure fair, lawful and transparent processing, identify relevant lawful processing condition etc.

<p>Electronic mail (e.g., emails or texts)</p>	<p><i>The Data Protection (Bailiwick of Guernsey) Law, 2017.</i></p> <p><i>The European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004.</i></p>	<ul style="list-style-type: none"> • The individual must have given sender specific consent to send marketing emails/texts or the sender is using soft opt-in provision – see section below for more information about this. • The business / sender must not disguise or conceal identity. • The business / sender in each communication must give a valid contact address for consumer to opt-out, or some other way to opt-out (e.g. unsubscribe option). • Where processing personal data – the business must comply with Law e.g., ensure fair, lawful and transparent processing, identify relevant lawful processing condition etc.
<p>Faxes</p>	<p><i>The Data Protection (Bailiwick of Guernsey) Law, 2017.</i></p> <p><i>The European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004.</i></p>	<ul style="list-style-type: none"> • The individual must have given sender specific consent to send marketing faxes. • The business must include the sender’s name and a contact address or freephone number. • Where processing personal data – the business must comply with Law e.g., ensure fair, lawful and transparent processing, identify relevant lawful processing condition etc.
<p>Post</p>	<p><i>The Data Protection (Bailiwick of Guernsey) Law, 2017.</i></p>	<ul style="list-style-type: none"> • The business must obtain name and address fairly and lawfully and identify relevant lawful processing condition. • The business must tell consumer about the postal marketing. • The individual must be provided with info about how to opt-out. • The business must screen against its own ‘do not contact’ lists.

Business-to-Business Marketing

Business-to-business marketing is where you send direct marketing to another business or a business contact.

The Directive contains rules on direct marketing by electronic message (e.g., phone call, email, text message and fax). These rules differ depending on your chosen method of direct marketing and the type of business that you intend to contact. In some cases, you may need consent.

Businesses are classed as ‘corporate subscribers’ under the Directive. However sole traders and other types of partnerships are classed as ‘individuals’ and, as noted above, the Directive treats them the same as individuals.

In general, the direct marketing rules in the Directive apply equally to corporate subscribers and individual subscribers. The main difference is that rules on marketing by electronic mail (e.g., email or text message) do not apply to corporate subscribers.

If you are processing personal data for direct marketing purposes, even in a business context, the Law applies.

At a glance, the requirements of business-to-business direct marketing include:

Type of Direct Marketing	What legislation applies?	Overview
Live calls	<p><i>The European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004.</i></p> <p><i>The Data Protection (Bailiwick of Guernsey) Law, 2017</i> – for individual’s details.</p>	<ul style="list-style-type: none"> • The business must be able to opt-out. • The business must screen against the UK’s Corporate Telephone Preference Service (CTPS). • The business must screen against its own ‘do not call’ lists. • The business being marketed to must have given caller specific consent to make marketing calls about claims management services. • The business caller must display telephone number. • The business caller must say who is calling and if requested give contact address or freephone number. • Where processing personal data - must comply with the Law e.g., ensure fair, lawful and transparent processing and

		identify relevant lawful processing condition etc.
Electronic mail (e.g., emails or texts)	<p><i>The European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004.</i></p> <p><i>The Data Protection (Bailiwick of Guernsey) Law, 2017</i> – for individual’s details.</p>	<ul style="list-style-type: none"> • The business / sender must not disguise or conceal identity. • The business / sender in each communication must give a valid contact address for consumer to opt-out. • Where processing personal data - must comply with Law e.g., ensure fair, lawful and transparent, identify relevant lawful processing condition. • Where you are not processing personal data (e.g. where the e-mail address does not contain a name or other information relating to an identifiable individual) - you do not need to comply with the Law, you do not require the consent of the recipient business, and you do not need to rely upon the soft opt-in provision. • Where you are not processing personal data - if a business tells you that they object to your electronic mail based direct marketing, you are not required under the Law or Directive to comply with their objection. However, it serves little purpose to continue to send direct marketing messages to a business that has asked you not to.
Faxes	<p><i>The European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004.</i></p>	<ul style="list-style-type: none"> • Good practice is for the business carrying out the marketing to comply with opt-out • Individual employees of the businesses being marketed to can opt-out • The business sender must not disguise or conceal identity

		<ul style="list-style-type: none"> • The business sender must give a valid contact address for opt-outs • Where processing personal data - must comply with the Law e.g., ensure lawful, fair and transparent and identify relevant lawful processing condition etc.
Post	<i>The Data Protection (Bailiwick of Guernsey) Law, 2017</i> – for individual’s details.	<ul style="list-style-type: none"> • The business can send marketing post to corporate bodies. • Named employees can opt out. • The business must screen against its own ‘do not contact’ lists of named employees.

Direct marketing via online advertising

If you are considering using online advertising for your direct marketing, remember that the information you can collect on people is wider than what they actively give you. For example, it can include information gained by observing how someone uses the online environment (such as the devices they use) and inferred information based on this (such as predictions about their interests). This inferred information can also be special category data (eg inferring that someone suffers from a particular condition because their browsing history contains particular medical websites).

People may not understand how online advertising works or how their information is used. As a result they are less empowered to make choices about how their information is used.

If you are considering online advertising you must do the following:

Get consent

In most cases online advertising involves using cookies or similar technologies. For example, anything used to store information or access information stored on a user’s device, such as cookies, fingerprint techniques or tracking pixels. If you intend to use cookies or similar for your online advertising, you must comply with [*The European Communities \(Implementation of Privacy Directive\) \(Guernsey\) Ordinance, 2004*](#)¹ by getting consent. This is the case whether the cookie is your own or that of a third party. If your online advertising involves special category data, you should get explicit consent.

Tell people what you are doing

You must give people concise, easy to understand information about how you are using their information to advertise to them online. The volume of organisations involved in online advertising and the technical complexity make it difficult for people to understand why their information is being collected and who is using it.

Under the *European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004* you must give users clear and comprehensive information about what the cookies etc actually do that you intend to use for your online advertising.

¹ Note this law does not use the term ‘cookie’ – it refers in Section 4 to ‘storing information on the terminal equipment of the subscriber’.

Remember, you must comply with data protection law as well as the *European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004*, if you are using personal information.

Direct marketing via social media

Social media platforms process large amounts of personal information about their users, including their behaviour and interactions. The platforms may allow you to target people for direct marketing purposes using particular tools. One of the most common is known as “audiences”. This can involve targeting:

- your existing customers on the platform. For example, giving your customers’ contact details to the platform and it then checks its userbase and those who match are added to this audience; and
- people that are like your existing customers. For example, setting targeting parameters based on an existing audience (such as demographics or interests) and the platform finds its users who are similar.

The activities in social media targeting are complex and you must make sure that you comply with the Law. For example:

- **Be clear what information you need to achieve your purpose**
You should be clear about what information you want to use and why it is necessary. This applies to when you want to use your social media presence to target direct marketing at people and when you want to use the platform’s advertising services.
- **Ensure what you want to do is fair, lawful and transparent**
You must ensure that your use of people’s information is fair to the people involved. You must be upfront and clear about what you want to do, particularly if people are unlikely to expect it to take place (e.g. people without social media accounts will not expect you to share their information with a platform they do not use). Some types of audience may include people that you do not have any direct relationship with. You should be satisfied that the platform has taken all necessary steps to tell people what is happening. You also must be clear about which lawful processing condition applies.
- **Define roles and responsibilities between you and the social media platform**
Although the platform may undertake most of the actual processing, you are instigating it. This is because you provided the original information and defined the targeting parameters you want it to use. In many cases, it is likely that you and the platform are joint controllers, as you are both deciding what the information is being used for.

Lawful processing conditions for personal data

Before you (when you are acting as a ‘controller’ or ‘processor’) start to collect or use people’s personal data, for direct marketing or any other purpose, you must identify and document a ‘lawful processing condition’ (a valid legal reason that can be relied on). Doing this is part of your obligation under the [‘lawfulness, fairness & transparency’ principle](#) as outlined in the Law’s [seven data protection principles](#).

The Law contains a number of lawful processing conditions and when they can be relied upon will depend on the type of processing you are doing. Below are two lawful processing conditions most

relevant to direct marketing, together with an explanation of what you need to bear in mind:

1. Consent

Consent is one of the [lawful processing conditions for personal data](#) allowed under the Law. It can only be used when you are giving people a genuine choice.

To comply with the Law you must ensure that the consent collected complies with the following conditions:

- it is clearly demonstrable that the individual has given the consent
- the consent was freely given
- the individual knows, before giving it, that they can withdraw the consent at any time
- the consent is provided in a manner clearly distinguishable from other matters
- information about the consent is clear and in plain language and is intelligible and easily accessible.

If someone withdraws their consent to direct marketing you must comply with this request in accordance with Section 17 of the Law. There is more information on this in the section 'Stopping direct marketing' below.

2. Legitimate interests

This lawful processing condition allows processing where you believe that the processing is necessary for specified legitimate interests (note: public authorities cannot use this lawful processing condition).

On face value, legitimate interests may seem the most flexible lawful basis for processing, but you cannot assume it will always be the most appropriate. It is likely to be most appropriate where you use people's data in ways they would reasonably expect and which have a minimal impact, or where there is a compelling justification for the processing.

If a party would not reasonably expect the processing, or if it would cause unjustified harm, their interests are likely to outweigh your legitimate interests.

If you choose to rely on legitimate interests, you should consider the balance of your interests against the [significant interests](#) of the data subject.

One way to consider this is through a 3-part test:

- identify and clearly specify what your legitimate interest is;
- clearly set out how the processing is necessary to achieve it; and
- be clear about how this balances against the individual's significant interests.

If a data subject would not reasonably expect the processing, or if it would cause unjustified harm, their interests are likely to override your legitimate interests.

In addition, the processing must be necessary. If you can reasonably achieve the same result in another less intrusive way, legitimate interests will not be appropriate.

You should keep a record of your legitimate interest(s) and the 3 part test considerations and ensure details are provided in the relevant [Data Processing or Privacy Notices](#).

Soft Opt-In

The term 'soft opt-in' is not used in the *European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004*, but it is commonly used to describe the exception in the law to the electronic mail consent requirement. Many organisations find that the soft-opt in is a good option to use to send electronic mail to their existing customers. However, if you want to use it instead of consent, you must meet all of its requirements. The soft opt-in breaks down into five requirements:

1. You obtained the contact details – you must have obtained the contact details directly from the individual subscriber you want to send electronic mail to.
2. You did this during the course of a sale, or negotiation of a sale, of a product or service – they must have bought something from you or have actively expressed an interest in buying your products or services (eg by asking for a quote or more details of what you offer).
3. You are marketing your similar products and services – you must be sending electronic mail about your similar products and services. This means you can't send messages about things that people wouldn't reasonably expect from you in that context and you can't send the marketing of other organisations.
4. You provided an opportunity to refuse or opt-out when you collected the details – you must give a clear, simple opportunity to opt-out of your electronic mail marketing at the time you first collect their details (eg an online form with a prominent opt-out box).
5. You give an opportunity to refuse or opt-out in every subsequent communication – you must give people a chance to unsubscribe or opt-out of every subsequent communication you send. It must be simple and free of charge for them to do so (apart from the cost to them of sending the message).

Currently, the soft opt-in only applies to commercial marketing of products or services. This means you must have consent if you want to send direct marketing about fundraising, campaigning or to otherwise promote your aims or ideals. Remember, you must comply with data protection law as well as the *European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004* if you are using personal information. If you do make use of the soft opt-in you will need to rely on the 'legitimate interests' lawful processing condition.

Automated Calling Systems and Silent Calls

Automated Calling Systems

Automated calling systems are systems which are capable of:

- automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system; and
- transmitting sounds which are not live speech for reception by persons at some or all of the destinations called.

Automated calling systems are not permitted to be used unless:

- The party being contacted has consented to this specific communication method.

Silent Calls

Silent Calls are calls generated by machines called predictive diallers which are used to send telemarketing messages. They work by dialling many telephone numbers automatically, and when the call is answered, it is connected to a call centre. If all call centre staff are busy and there is no-one to answer the phone this results in silence on the line. These calls can be frightening for people, especially for those who live alone.

Stopping direct marketing

Effective direct marketing relies on you having a positive relationship with individuals you are marketing to and that is usually rooted in them having consented to you contacting them.

Individuals have an absolute legal right under data protection law whereby if they ask you to stop sending direct marketing material to them you must stop. To continue sending unwanted marketing information to someone who has asked you to stop is a breach of the Law.

Individuals can ask you to stop sending direct marketing via two methods:

- **Specific written request**

If you receive a written request (including by email) from an individual asking for marketing to stop, you have up to 1 month to cease your direct marketing.

In extreme circumstances you can extend this timeframe by a further 2 months if you notify the individual as soon as possible of your reasons for needing an extension. These reasons need to be based on either the request itself being complex (as opposed to the complexity of your organisation's processes for facilitating the person's request), or there being an extreme number of requests from that person. You cannot extend the deadline simply to be able to send two more months of marketing material.

- **Generic automated unsubscribing**

This would usually be an unsubscribe link provided within a marketing email that provides for the automated cessation of marketing. If someone clicks this to unsubscribe and the marketing continues you could be in breach of the Law.

Need further help?

If you need further clarity on anything please [contact us](#).