



Information Commissioner's Office

## **The Information Commissioner's response to Ofcom's consultation on helping consumers to engage in communications markets**

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 ("DPA"), the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations ("EIR") and the Privacy and Electronic Communications Regulations 2003 ("PECR"). She is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.

It should be noted that data protection laws are undergoing significant reform at the present time and the General Data Protection Regulation (GDPR) will take effect in the UK from 25 May 2018. Laws concerned with electronic direct marketing are also undergoing reform and this may lead to changes to PECR. We would be happy to provide further advice and guidance to Ofcom on the potential impact of these reforms.

The Information Commissioner welcomes the opportunity to respond to Ofcom's consultation on helping consumers to engage in markets. The Commissioner's response is restricted to those areas that fall within her regulatory remit.

Ofcom has identified that consumers who engage with markets may receive better or less expensive services than those who do not. The consultation suggests prompting consumers to engage so that they can get the best deals and get the services most appropriate to their needs. It suggests promoting engagement by companies sending information near or at the end of the consumer's contractual period about the terms they are on, and about those products and services that may best meet their needs. The Commissioner wants to ensure that data protection and electronic marketing implications are understood and that information rights are integrated in to any possible solutions.

***Question 3: What are your views on the suggested possible solutions to help address consumers not knowing when to engage? What could be their positive or negative effects? What other possible solutions might there be?***

The consultation document suggests that companies could send reminders or prompts to individuals when their contractual terms are coming to an end or have ended, and information about 'roll-over' terms when contracts have already expired. The content of reminders and prompts will need to be carefully considered if they are to be sent without engaging the direct marketing provisions of the DPA/GDPR and, if the prompts are to be sent electronically, PECR/the forthcoming ePrivacy Regulation.

The DPA defines direct marketing as being the communication, by whatever means, of any advertising or marketing material which is directed to particular individuals. This includes the promotion of products, services, goods, aims or ideals. Under the DPA, individuals have the right to require that organisations do not use their personal data for direct marketing purposes. If the content of the prompts is marketing, then any sending of those prompts will need to comply with the law, including the right to prevent processing for direct marketing.

It is our view that the content would need to be neutral and informative, and not promote any particular service, provider or seek to raise the sender's own profile.