

More

Data processing because it's in
your Legitimate Interest

An alternative to Consent and
“Opt-In Only”

First principles

Data Protection law applies to all processing of data.

- ***A rights based framework***

PECR adds a layer on top

- ***A small set of rules***

Data Protection Policy = ***all the things you do with data***

Privacy Notice = ***what you say to people about the policy***

Privacy and Electronic Communications / ePrivacy

This is a rules based law

You need consent, always, for direct marketing by

- **Telephone to TPS registered numbers**
- **Email**
- **SMS**
- **Digital**

GDPR raises the standard for consent

ePrivacy may scoop up all telephone marketing

Grounds for lawful processing

- Consent
- Contract / Legal Obligation
- Public Task
- Legitimate Interest

Consent vs Legitimate Interest

Consent:

*Here's what we'd like to do;
is that OK?*

Legitimate Interest:

*Here's what we would like to do / already do;
let us know if you'd prefer us not to.*

Consent – Opt In

- *You should get consent if what you do is intrusive or unexpected*
- *You mustn't ever presume you've got it*
- *You must be able to prove you've got it*
- *You must renew it*
- *It must be granular*
- *It must be freely given*

Legitimate Interest – Opt Out

- *You need to carry out the processing*
- *You must tell people you're using it*
- *You need to ensure you don't cause them harm or infringe their fundamental rights and freedoms*
- *It lasts until your needs change*
- *If people complain, you got it wrong. If they don't complain, you probably didn't*

Risks

Consent

You don't get it

You fail to renew it

It's not sufficiently granular

You lose income

You lose contact / recruitment opportunities etc.

Legitimate Interest

You don't get the balancing exercise right

You do lots of things which are intrusive so you need consent anyway

You only ever communicate electronically so you need consent anyway

ICO says, in its consent guidance

As a general rule, whenever you have difficulty meeting the standard for consent, this is a warning sign that consent may not be the most appropriate basis for your processing. So we recommend you look for another basis.”

Legitimate interests: if you are a private-sector organisation, [i.e. not a public authority] you can process personal data without consent if you have a genuine and legitimate reason (including commercial benefit), unless this is outweighed by harm to the individual's rights and interests.”

What might this look like?

| Group | Pupil Recruitment | School | Post School |
|---------------------------------------|-------------------|---------------------|----------------|
| Parents (education) | Legit Interest | Contract | Legit Interest |
| Parents (other purposes) | Legit Interest | Legit Interest | Legit Interest |
| Pupils | | Contract | |
| Alumni | | | Legit Interest |
| Others / Friends | Legit Interest | Legit Interest | Legit Interest |
| Any marketing by TPS phone or digital | Consent | Consent | Consent |
| Anything intrusive | Consent | Consent or Contract | Consent |

Contact

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