

# Guidance for political parties for campaigning or promotional purposes

## Introduction

Engaging voters is important in a healthy democracy and in order to do that political parties and candidates will campaign using a variety of communication methods. However, contacting an individual by any of the methods listed in the table below to promote the aims and ideals of a political party in order to gain support for a party or candidate, or otherwise influence an individual, is 'direct marketing' and this is regulated by law.

Under the Privacy and Electronic Communications Regulations 2003 and the Data Protection Act 1998 there are specific rules you must comply with for each type of communication method. The Information Commissioner enforces compliance with both pieces of legislation.

Communication method	In summary you may use this method to promote a party or candidate...
Post addressed to particular individuals	unless the individual has asked you not to write to them or not to send them marketing material by post. In addition, s91 of the Representation of the People Act 1983 gives a candidate at a parliamentary election the right to send an election address by post. This specific right applies even if the individual has asked you not to contact them. See section 5.
Email/text and other messages to mobile phones/voicemail	where the individual has consented to contact of that sort from you for those purposes. See sections 6 and 7.
Fax	where the individual has consented to contact of that sort from you for those purposes. See section 8.
Phone calls	unless you have grounds for believing the individual would not want you to contact them such as TPS registration. See section 9.
Automated phone calls	where the individual has consented to contact of that sort from you for those purposes. See section 9.
AND in every case	you must normally identify yourself in the communication and provide contact details to allow individuals to contact you and easily opt out of unwanted direct marketing. The Representation of the People Act 1983 also requires specific details to appear on election publications.

This guidance explains what you need to do in each case including where you use viral marketing and tell a friend campaigns. Subject to the provisions of the Representation of the People Act, individuals have an absolute right to object to direct marketing from a particular political party which you must respect and take steps to comply with.

More detailed guidance on the general principles of the Data Protection Act 1998 and the Privacy and Electronic Communications Regulations 2003 can be found on our website.

In addition compliance advice for MPs and their offices on handling personal information when carrying out constituency casework is available from the Department of Finance and Administration at the House of Commons<sup>1</sup>. You should not use contact details obtained when carrying out constituency casework for direct marketing unless you are sure that the constituents concerned would expect that contact from you and would not object.

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<sup>1</sup> Advice for members' offices,  
[www.parliament.uk/documents/upload/advice\\_for\\_members\\_offices.pdf](http://www.parliament.uk/documents/upload/advice_for_members_offices.pdf)

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## 1. Why comply?

The actions of a political party come under close scrutiny from the public and the media. It is not just in your interests to act lawfully but you should also have respect for the privacy of the individuals you seek to represent by treating them fairly. Treating individuals fairly includes using their information only in a way that they would expect, while respecting any preferences they have expressed about not receiving direct marketing (subject to a candidate's right to send an election address at a parliamentary election).

In recent years we have investigated complaints about political parties using direct marketing and on occasion we have used our enforcement powers to prevent the party doing the same thing again. Failure to comply with an enforcement notice is a criminal offence. We will consider the nature and number of any complaints received about direct marketing by political parties with a view to using the powers at our disposal to prevent parties from making the same mistake in future.

The complaints we have received reveal that individuals find unwanted direct marketing, and unwanted contact from political parties in particular, to be extremely annoying. This is more likely to be the case where more intrusive means of contact are used or the individual has previously objected to marketing and where they are opposed to your views.

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## 2. What is direct marketing?

Section 11 of the Data Protection Act 1998 (the Act) defines direct marketing as "the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals".

We take a broad view of the definition of what constitutes marketing and are satisfied that it is not only the offer for sale of goods or services but also includes the promotion of the aims and ideals of any organisation including political parties. This would include appeals for funds or support for a campaign, encouraging individuals to take some form of direct action or to vote for a particular party or candidate.

Our view was supported by the Information Tribunal in 2006 when it dismissed an appeal by the Scottish National Party, who argued that political campaigning was not marketing.

Because marketing only includes communications "directed to particular individuals", mailings addressed to individuals by name are caught by the definition – whether delivered by the Royal Mail or by local volunteers – but leaflet-drops and mailings which are unaddressed, or addressed merely to "the occupier" do not fall within the statutory definition of direct marketing.

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### 3. Is political profiling and market research direct marketing?

Political parties do not just communicate with individuals for promotional purposes. A political party can conduct genuine research in the same way that professional market research companies do to help inform their views and formulate policies. However, communications claiming to be for research that are in reality intended to gain support now or at some point in the future are covered. For example the following are direct marketing:

- A telephone call which starts by seeking an individual's opinions and then urges support or invites contact with a candidate or to provide promotional materials on request; and
- A telephone call which seeks an individual's opinions in order to use that data to identify those people likely to support the party and at a future date in order to target them with marketing.

It should be possible for market research to be carried out without recording the information in a way that identifies the individual respondent. If you record the responses in a way that it can be linked to the individual so that you can then follow up their responses and contact them in future you will be conducting marketing and will need to explain that to them before collecting their information.

### 4. I have received an objection to direct marketing from an individual what do I need to do?

Subject to the provisions of the Representation of the People Act 1983 (concerning a candidate's right to send an election address at a parliamentary election), individuals have an absolute right to object to direct marketing from any organisation and the processing of their information for direct marketing purposes. You must respect any written request you receive from an individual not to send them promotional material (other than election addresses as mentioned above) or otherwise process their personal information for direct marketing purposes. In those cases you will not be able to contact them to promote your aims or ideals by post, email, text, video and voicemail messages to their mobile phone and automated or live calling. You will also not be able to use their information in any profiling of people in a particular area or other manipulation of a larger data set to determine who to contact with direct marketing during a campaign.

You should either keep a list of individuals who have exercised their right to object and screen all of your prospective communications against it, or you should have some other process to ensure that individuals are not contacted by you in circumstances where you should respect their wishes not to contact them.

Where a constituency party or local association have a separate legal identity from the party's central office then a request to one of them not to send promotional material does not automatically apply to the others. However, it is unlikely that most people will appreciate this. It would, therefore, be

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good practice on receiving an objection of this sort to check whether the individual also requires the request to be passed on to the other entities.

The structure of a political party also affects whether it has responsibility under the Data Protection Act for the actions of its candidates during an election. Again, this is something that few people are likely to appreciate and adverse publicity about a candidate's actions can obviously reflect badly on the party as a whole. It therefore makes good sense to encourage candidates to comply with the Act.

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## 5. What do I need to do when contacting individuals by post?

If you use personal information, such as name, address and any information you have about the preferences of the individual, to promote a political party by sending them promotional messages by post you will need to make sure that you process their personal information fairly and in most circumstances respect any requests not to receive information from you.

Political parties have unrestricted access to the full electoral register for electoral purposes which includes contacting individuals on the list by post. Indeed, under section 91 of the Representation of the People Act 1983, a candidate at a parliamentary election has a right to send election addresses by post. Broadly speaking, they may send one unaddressed postal communication to each address, or one postal communication addressed to each elector.

Quite apart from this specific right, your use of the full register during elections is, of course, perfectly legitimate and it will not be unfair to contact an individual to promote your party unless you are aware that the individual objects to direct marketing. The same situation applies to any contact details you obtain from publicly available sources of information.

Where you collect information directly from the individual you must clearly explain to them that you will be using their information to target them with direct marketing unless it is otherwise apparent from your relationship with them that this contact will occur.

Where you send promotional mail to known supporters you need to be satisfied that those supporters would expect their personal information to be used for that purpose.

Where you buy or rent mailing lists to contact individuals who meet a particular profile, you need to be sure that the personal information concerned has been fairly obtained only from individuals who would expect their information to be used for promotional purposes by a particular party or parties.

It is good practice to identify yourself in postal communications and to provide contact details for individuals

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who want to object to any further direct marketing from you. The Representation of the People Act 1983 also requires specific details to appear on election publications.

Unless you are sending a communication under section 91 of the Representation of the People Act 1983 (see above), then in all cases where you intend to send promotional messages by post, regardless of the source of the address, you must first screen the potential recipients against the list of individuals who have objected to receiving direct marketing from you and suppress any mailings to them.

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## 6. What do I need to do when contacting individuals by email, text message (SMS), video message (MMS) or voicemail left on answering machines?

Email, text message, video message and voicemail are all forms of electronic communication and the same rules apply to them all. You must have the individual's prior consent to communicate with them in this way. In addition in all such communications you must identify yourself and provide an address that individuals can use to object and request that you do not send them any further communications.

You may have collected email addresses or mobile phone numbers in connection with particular issues highlighted in previous campaigns for example school closures or road building. As prior consent is required you must assess the basis on which those contact details were collected originally if you want to use them to promote subsequent campaigns by electronic communication including text messages and emails.

If an individual provides their contact details in response to a leaflet about a particular local campaign, for example in connection with a campaign to save a local hospital, you cannot assume that the individual will always be happy to receive promotional emails, text messages etc about other issues from your party.

If, however, an individual provides their email address in response to a leaflet about a particular campaign and the wording on that leaflet states clearly and explicitly that by providing an email address or mobile phone number that individual consents to the use of those details in any current and future campaigns, then you will be able to retain their contact details and use them more widely for promotional purposes.

It is important to ensure that the notification you give to individuals is prominent, clear and explicit so that their choice to provide you with their details is fully informed. You may also want to consider using a tick box where the individual indicates that they opt into or consent to future communications from you by email, text message, video message or voicemail.

If you purchase email addresses or mobile phone numbers from a list broker with the intention of matching those up against other lists you have of supporters, likely supporters

or the full electoral roll in order to send them an electronic communication you need to be sure that the individuals have consented to receiving these forms of contact from you. Therefore an explanation must have been given to the individual by the list broker, or other person who provided the broker with the information, about how their information would be used by third parties and they have indicated their consent in some way. The explanation given to the individual must have been in broad enough terms to clearly include promotional messages from your political party. Once you have those assurances, it is for you to decide whether that individual would welcome contact from you in this form.

If you receive any objections from individuals you must ensure that you rapidly suppress their details. Making it easy for individuals to object and promptly respecting their choices will help to reduce the risk of breaking the law (and of causing individuals to complain that you are not respecting their privacy).

There is no need for you to get the consent of individuals if you have an existing list of supporters' email addresses or mobile phone numbers which you compiled before 11 December 2003 and if you satisfy all of the following criteria:

- you compiled the list in line with privacy legislation at that time (so at the very least you told the person when you collected their details that you would be contacting them for marketing purposes);
- you have used the list recently;
- the individual hasn't already told you to stop contacting them;
- you provide a valid opt-out address in each message; and
- you stop sending them direct marketing as soon as they ask you to.

Always check that you are not going to send direct marketing to individuals who have objected to such contact from you.

We have produced detailed guidance on complying with the Privacy and Electronic Communications Regulations 2003 which is available on our website.

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## 7. Can I use viral marketing or tell a friend campaigns to send email, text message (SMS) or video message (MMS)?

You may be considering using 'viral marketing' or 'tell a friend' campaigns to tap into social and family networks of your supporters or potential supporters, this is where:

- you ask a person to send the original marketing message to a family or friends; or
- you ask a person to give you their family or friends' contact details.

These types of campaign are not a way of getting around the need for consent from the recipient of electronic communications and you should take care in the design and implementation of these campaigns.

Arguably, where you ask an individual to forward your message or promotional materials to an individual who has not consented to that contact, you are encouraging them to break the law in order to promote your party or point of view. You are strongly advised to warn individuals of this and advise them that they should only forward electronic communications to friends and family that they are reasonably certain would consent and will be happy to receive them.

Where you send a message to someone whose details you have collected from a friend or family member you will have to assume that they have consented to that contact through a third party (the friend or family member who gave you their details). You will be liable for any messages sent to email addresses obtained from a friend or relative. When collecting contact details you should:

- ask the individual to confirm that they have the consent of the friend or relative whose details they are passing on to receive this contact;
- check that the recipient hasn't already objected to marketing from you. If those contact details appear on your suppression list you may have cause to question whether consent has been obtained at all; and
- tell the individual that you will inform the recipient of the message how you got their details and include it in the message to the individual.

You should bear in mind that this method of communication may be used maliciously by individuals to inconvenience or harass others or to discredit you. For example, it is possible to envisage circumstances where a person might give the contact details of another person to a whole range of parties whose views that individual strongly disagrees with and knowing that they would not consent to such contact, will be annoyed by the contact and/or will subsequently complain about your party. While you are not responsible for the malicious activities of an individual using the service you provide, you should bear in mind that, at the very least, the

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recipient may forever associate you with that unpleasant experience. In any event, you should always identify yourself, include an address for objections and rapidly suppress the recipient's contact details to avoid further distress.

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## 8. What do I need to do when contacting individuals by fax?

If the user of the fax is an individual as opposed to a corporate subscriber you must have their explicit consent to receive promotional materials from you by fax.

If you are collecting fax numbers from individuals in order to use them for direct marketing you will need to inform them that their information will be used in that way and obtain their consent before collecting the information from them. If you obtain fax numbers from third parties you will need to be sure that the individual has consented to their number being used for promotional purposes by a third party such as a political party or that the information has been obtained from publicly available directories.

You must identify yourself in the fax and provide an address or number where you can be reached free of charge.

You cannot send unsolicited marketing to individuals, including corporate subscribers, who have registered with the Fax Preference Service (FPS) or who have advised you directly that they do not want to receive direct marketing.

If you add fax numbers to postal addresses, even if you are aiming to contact an existing supporter, you must make sure you screen your list against the FPS list first, unless the supporter has agreed to receive promotional faxes from you. For more information, please visit the FPS website<sup>2</sup>.

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## 9. What do I need to do when contacting individuals by telephone?

You must treat individuals fairly. If you are collecting telephone numbers from individuals in order to use them for direct marketing you will need to inform that their information will be used in that way. If you obtain numbers from third parties you will need to be sure that the individual has been informed and has a reasonable expectation that their number will be used for promotional purposes by a third party such as a political party or the information has been obtained from publicly available directories.

If a person has agreed to you telephoning them, then you may do so even if they have registered their number with the Telephone Preference Service (TPS). Otherwise, however, you cannot make phone calls to anyone, including an existing supporter, who has registered with TPS or who has objected to you directly about the use of their information for direct marketing purposes. For more information, please visit the TPS website<sup>3</sup>. Where you are permitted to telephone an individual, you must identify yourself at the start of the call

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<sup>2</sup> Fax preference service,  
[www.mpsonline.org.uk/fps/](http://www.mpsonline.org.uk/fps/)

<sup>3</sup> Telephone preference service,  
<http://www.tpsonline.org.uk/tps/>

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and if requested provide an address or number where you can be reached free of charge to object to marketing. You should also record and respect any objection to marketing made by the individual at the time of the call.

If you want to use automated calling where a recorded message is played to the person who answers the phone you will need the prior consent of the individual. Obtaining consent to make 'voice calls' is not sufficient and the automated nature of the calls must be clear in the information given to individuals to inform their decision. You must identify yourself in the message and provide an address or number where you can be reached free of charge. It is worth noting that many individuals have told us that they consider automated calls to be extremely intrusive and even disturbing.

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## 10. Are there any other things I need to consider when using information for direct marketing purposes?

You will need to comply with the principles of good information handling from the point at which you first collect personal information to the moment it is deleted. You will need to be aware of what you hold and why and you should routinely assess and amend the information to ensure that it is fit for purpose. Amongst other things this will require you to:

- be transparent about your use of the individual's information and respect their preferences;
- use it only in ways that are compatible with the purposes you or a third party provider have informed the individual of;
- not collect any more information than you need for the purpose you have told the individual about;
- ensure that you do not do not keep the information for longer than necessary to fulfil those purposes;
- keep the information secure and delete or securely destroy information when it has served its purpose;
- respect individuals' rights of access to information you hold about them and to object to your using their information; and
- only send the information outside of the European Economic Area where you have taken steps to ensure it is protected.

See the information for organisations on our website for detailed guidance on the application of Data Protection Act 1998.

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## More information

If you need any more information about this or any other aspect of data protection, please contact us.

### Phone

0303 123 1113

### E-mail

please use the online enquiry form on our website

**[www.ico.gov.uk](http://www.ico.gov.uk)**

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