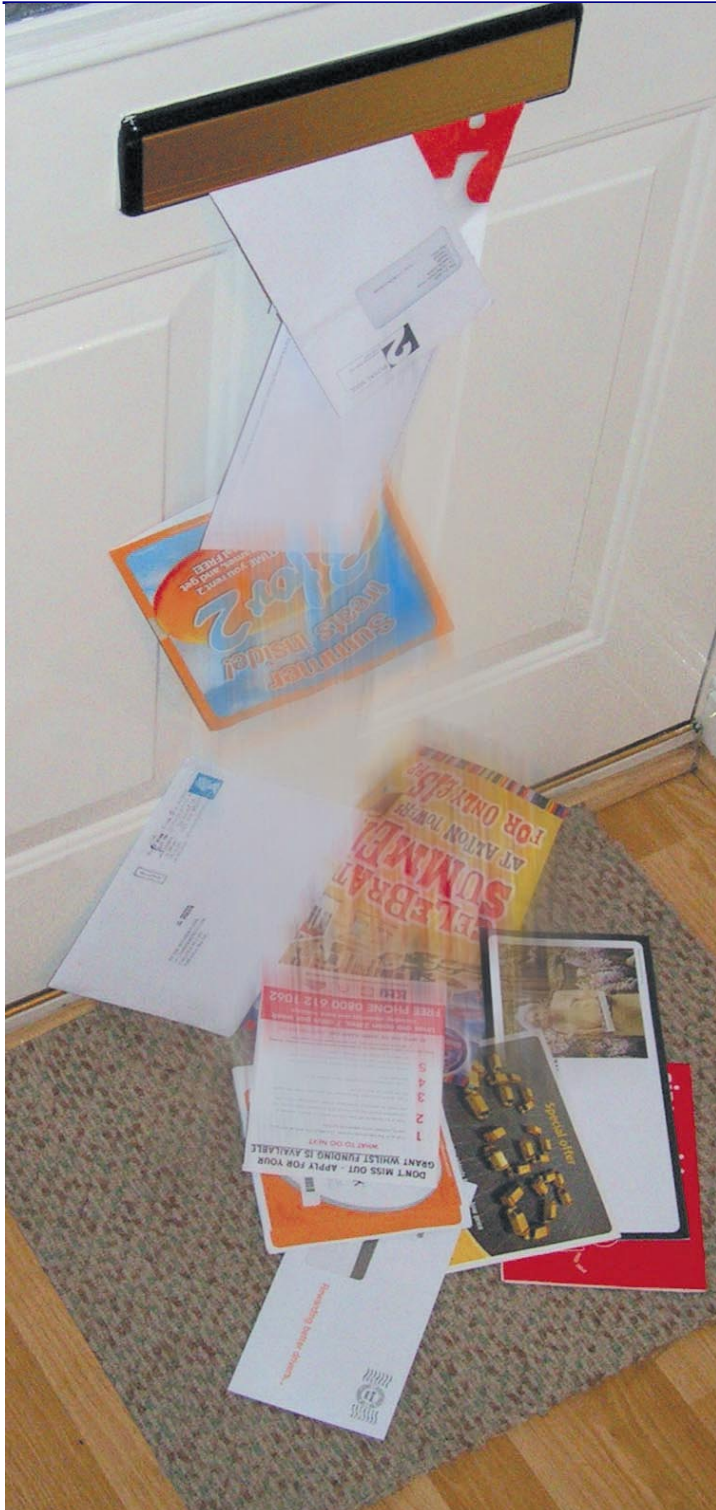


It's your information

Unwanted marketing



This guidance will help you understand the rights you have in relation to direct marketing. It will also explain what you can do if you believe an organisation is breaking the law and what action can be taken against organisations that break the law. It is based on the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

What is meant by 'direct marketing'?

Direct marketing means the communication by any means of any marketing or advertising material which is directed at particular individuals. It includes messages trying to sell goods or services and those promoting an organisation or its values or beliefs, such as material from charities or political parties asking for your support. Direct marketing would include, for example, an email advertising car insurance sent to your e-mail address or a phone call from a charity asking for a donation. It does not include calls that are purely for market research.

Some of the rights you have are to do with 'unsolicited' direct marketing. This means marketing that you have not specifically asked for. For example, it may have been sent 'out of the blue' by a company or it could have been sent because you did not object to direct marketing when you gave your details to an organisation.

What are your rights about marketing?

The law is different depending on how the marketing is sent to you.,

- **Mail**

You must be told when your information is collected that it is going to be used for direct marketing, unless this is obvious. This is particularly the case when an organisation intends to give your information to others so they can also send you direct marketing. However, if you have booked a holiday through a tour operator, for example, it would be reasonable for them to send you a brochure for next year's holiday even though you may not have been told about it.

You have a right under the Data Protection Act 1998 to object to your personal information being used for direct marketing. To do this, you can tick an opt-out box if one is provided, or write to the organisation asking them to stop using your personal information for direct marketing. The organisation must comply with your request within a reasonable period. This should normally take no longer than 28 days.

More information about this right can be found in our leaflet 'Stop unwanted marketing', which you can get from our website at www.ico.gov.uk, or ask for a copy by calling our helpline on 01625 545745.

- **Telesales calls**

Organisations should not make direct marketing calls to you if you have told them that you do not want them to call you, or if you have registered your phone number with the Telephone Preference Service (TPS). The TPS is a list of phone numbers of people who do not want to receive unsolicited marketing calls. All organisations that make marketing calls should check their call lists against the TPS.

If your telephone number is on the TPS, and you don't mind receiving calls from a particular organisation, you can tell them you don't mind their marketing calls.

Organisations that collect your information over the phone and want to send you marketing material should give you the opportunity to object straight away.

- **Electronic mail marketing (e-mail, text, picture, video, voicemail and answerphone)**

The rules on electronic mail marketing apply not only to e-mail but to any message that consists of text, sound, images or a recorded voice. In other words, e-mail, text, picture, video, voicemail and answerphone messages will all be covered.

Organisations can only send unsolicited direct marketing by electronic mail if you have previously agreed to it. However, there is an exception to this rule, which applies where:

- the organisation collected your details in the course of a sale or the negotiations for a sale of a product or service;
- the messages are only marketing their similar products or services; **and**

- the organisation gave you a simple opportunity to refuse the marketing when they collected your details and, if you did not take this, a simple way for you to opt out of the marketing is included in every subsequent message.

This exception would apply, for example, if you buy a television from an online electrical goods website and they wanted to send you e-mails about other offers for similar electrical goods they may have. Normally to send direct marketing by e-mail the company would need your prior agreement. However, if they only intend to send marketing about similar products or services, such as a DVD player or product warranty, they will be able to do this if they give you a simple chance to refuse the marketing when your details are collected. This could be given in the form of a tick box. If you do not refuse, the organisation must make sure it provides you with a simple opportunity to opt out of the direct marketing in all future messages.

In any event, you can opt out of the marketing at any time and organisations must comply with any opt-out requests promptly.

- **Automated calls**

Automated calls are calls where a pre-recorded message is played instead of hearing a live voice. These calls can only be made to you when you have previously agreed that the organisation can do this.

- **Faxes**

As with automated calls, organisations cannot send you unsolicited direct marketing by fax unless they have your consent to do so. An organisation cannot send you direct marketing by fax if your number is registered with the Fax Preference Service (FPS).

As with the TPS, if your number is on the FPS, and you don't mind receiving marketing by fax from a particular organisation, you can tell them you don't mind them sending you marketing for the time being.

Should the marketer tell you who they are?

Yes. Organisations must not conceal their identity when they send you marketing. They should provide you with their legal name and, usually, appropriate contact details. This information could be a postal address, e-mail address or Freephone number.

For telephone marketing, they only need to provide you with their identity, unless you ask for their contact information. If you ask for their address they must provide it.

What should you do if you are receiving unwanted marketing?

First, you should contact the organisation sending you the marketing and ask them to stop. All messages must provide the name of the organisation sending them. You may need to provide some further information to the organisation so that they can stop the marketing, for example, your phone number or e-mail address. This is so they can check it is you and add you to the list of people they should not contact.

When you ask an organisation to stop sending marketing to you, the organisation should 'suppress' your details rather than delete them. This means that they will keep your details on file and a record that you have asked not to be contacted. If an organisation deletes your details, they will have no record that they should not contact you in the future.

If someone contacts you by phone, you may object to or refuse direct marketing during the call. It is, however, always best to put your request in writing (by post or e-mail) to that organisation as well. This way you will have a record to show you contacted them. If a postal or e-mail address is not provided, you will probably find it on the organisation's website.

As well as contacting the organisation concerned, you can also list your details on preference services such as the TPS and FPS. Organisations cannot contact you with direct marketing if you are on these lists unless you have told organisations directly that they can do this. If you put your details on these lists you will help reduce the number of unwanted calls or faxes you get. As well as the TPS and FPS, there are other lists such as the Mailing Preference Service and the E-mail Preference Service which many organisations use to screen out objections (although this is not a legal requirement). So adding your details to them can help reduce the amount of unwanted marketing you receive.

Contact details for these preference services are at the end of this leaflet.

If this doesn't work, what can the Information Commissioner's Office do?

If the marketing doesn't stop, you can make a complaint to the Information Commissioner's Office. You will need to fill in a complaints form, which you can get from our website at www.ico.gov.uk, or by calling the helpline on 01625 545745. When making a complaint you will need to provide us with:

- your name and contact details;
- the name of the organisation you are complaining about;
- details of the marketing you received; and
- what you have done to try and stop it.

If we believe an organisation may have broken the law, we will contact them. Our main aim will be to stop the marketing being sent to you and we will not take formal action in every case where a breach is likely to have occurred.

What are the penalties?

In most cases, sending direct marketing in breach of the law is not a criminal offence. However, if an organisation continually breaks the law, we can issue an Enforcement Notice. This will tell the organisation what the Information Commissioner believes it has done wrong and what steps it needs to take to comply with the law. The organisation has the right to appeal against this to the Information Tribunal. If they do not appeal or their appeal fails, and the organisation carries on and ignores the Notice, they would commit a criminal offence and could face a fine of up to £5,000.

Useful contact details

Telephone Preference Service

Telephone Preference Service (TPS)
DMA House
70 Margaret Street
London
W1W 8SS

TPS registration line: 0845 070 0707
Website: www.tpsonline.org.uk

Fax Preference Service

Facsimile Preference Service (FPS)
DMA House
70 Margaret Street
London
W1W 8SS

FPS registration line: 0845 070 0702
Website: www.fpsonline.org.uk

Direct Marketing Association

(For all other direct marketing and preference services enquiries.)

The Direct Marketing Association
DMA House
70 Margaret Street
London
W1W 8SS

Phone: 020 7291 3300
Website: www.dma.org.uk

More information

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

Phone: 01625 545745

E-mail: please use the online enquiry form on our website

Website: www.ico.gov.uk