

Privacy and Electronic Communications (EC Directive) Regulations 2003

When and how to complain about electronic marketing messages



Promoting public access to official information
and protecting your personal information



Information Commissioner's Office

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The Information Commissioner's Office (ICO) is the UK's independent public body set up to promote public access to official information and protect personal information.

We do this by promoting good practice, ruling on eligible complaints, giving information to individuals and organisations, and taking action when the law is broken. The relevant laws include:

- Data Protection Act 1998
- Freedom of Information Act 2000 in England, Wales and Northern Ireland
- Environmental Information Regulations 2004 in England, Wales and Northern Ireland
- Privacy and Electronic Communications Regulations 2003.



The Privacy and Electronic Communications Regulations 2003

The Privacy and Electronic Communications Regulations 2003 ('the regulations') give rules that govern **electronic marketing**. This leaflet is concerned with complaints about electronic marketing messages only.

The regulations also give rules about matters such as using calling-line identification, 'cookies' and directories. But this leaflet does not cover complaints about these. For more information about these, please see part 2 of our guidance note 'Privacy and Electronic Communications Regulations guidance' or call our helpline on 08456 306060 or 01625 545745.

If you have a complaint about direct marketing by post, please see our leaflet 'The Data Protection Act 1998 – When and how to complain'.

What does the ICO do?

We provide guidance and advice to organisations about how to comply with the regulations. We can take action against those who refuse to obey the law.

We can also advise you on what you can do to protect yourself against unwanted marketing communications.

What should I do if I think the regulations have been breached?

If you think the regulations have been breached, you should contact the organisation concerned. (For more information, see 'What do the regulations say?' on page 4). Tell them about the problem and allow them time to put things right. In many cases, things can be resolved quickly without us getting involved. You can also call our helpline for advice about what you can do to resolve the matter on 08456 306060 or 01625 545745.

What if I cannot resolve the matter myself?

If you have contacted the organisation about the problem but have been unable to resolve it, we may be able to help.

If necessary, we will investigate the problem further. If we think the law has been broken, we can give the organisation advice and ask them to solve the problem. In the most serious cases, we can order them to do so.

We cannot award you compensation or punish an organisation for breaking the law. Our main aim is to get the organisation to change the way it works so that it complies with the regulations in future.

What do the regulations say?

Telesales calls

Telesales calls are 'live' marketing calls, where you speak to a person. Telesales do not include genuine market-research calls, recorded messages or silent calls.

Silent calls can occur where automated diallers call a range of numbers and there is no call-centre worker free to talk to the recipient. For more advice about silent calls please contact Ofcom on 020 7981 3040, or see its website (www.ofcom.org.uk).

Telesales calls should not be made to **anyone** who has registered with the Telephone Preference Service (TPS) or the Corporate Telephone Preference Service (CTPS), unless they have told the caller that they wish to receive such calls from them.

Also, they should not be made to anyone who has told the caller directly that they do not wish to receive calls. If you wish to register your objection to receiving such calls, let the caller know in writing, making sure you date the letter and keep a copy.

When to complain to the ICO

We may be able to help if:

1. you have received a marketing call;
2. you can identify the caller;
3. the caller is based in the UK; and
4. you have
 - registered with the TPS or CTPS; or
 - a record showing you had previously informed the caller that you did not wish to receive its marketing calls.

If you cannot identify the caller, we will be unable to pursue the matter.

For more information about the TPS and CTPS, please see the Telephone Preference Service website (www.tpsonline.org.uk).

Automated calls

Automated marketing calls are pre-recorded marketing messages and can only be used with the prior permission of an individual or organisation. They do not include 'live' sales calls (where you speak to a person), voicemail messages or 'silent calls' (see page 4).

When to complain to the ICO

We may be able to help if:

1. you have received a pre-recorded marketing message;
2. you can identify the caller;
3. the caller is based in the UK; and
4. you have not previously consented to the call.

If you cannot identify the caller, we will be unable to pursue the matter.

If the automated call invites you to call a premium-rate number (one starting with 090), ask ICSTIS, the premium-rate regulator, for advice. For more information, please see its website (www.icstis.org.uk).

Faxes

Marketing faxes should not be sent to individuals without their prior permission, and should not be sent to **anyone** (individual or business) who has registered their number on the Fax Preference Service (FPS).

Also, such faxes should not be sent to anyone who has objected to getting them. If you want to object, you should do so in writing. Be sure to include the date and keep a copy of the letter.

When to complain to the ICO

We may be able to help if:

1. you have been sent a fax consisting of marketing or promotional material;
2. you can identify the sender; and
3. you have:
 - received a fax that you did not ask for and you have a record of your objection; **or**
 - received a fax through a fax number that is registered with the FPS.

For more information about the FPS, please see the Telephone Preference Service website (www.tpsonline.org.uk/fps).

Electronic mail

Electronic mail is emails, SMS (text), picture, video and answer-phone messages. Electronic mail marketing messages should not be sent to individuals without their permission unless **all** these following criteria are met:

1. The marketer has obtained your details through a sale or negotiations for a sale.
2. The messages are about similar products or services offered by the sender.
3. You were given an opportunity to refuse the marketing when your details were collected and, if you did not refuse, you were given a simple way to opt out in every future communication.

The regulations do not cover electronic mail marketing messages sent to businesses.

When to complain to the ICO

We may be able to help if:

1. you have received an electronic mail marketing message which you did not ask for **or** which does not otherwise comply with the above criteria;
2. the sender is based in the UK; and
3. you can identify the sender.

Spam

Most bulk 'spam' is sent from outside the UK. If you have a general problem with spam sent from overseas, then there is little help we can give. However, you could speak to your internet service provider (ISP) for advice on spam filters, or see our web pages on spam for general practical advice.

How do I complain to you?

To complain about a possible breach of the regulations, read the information in this leaflet first to see if it is something we can help with. If you think we can help, you should complete the attached complaint form, which will help you give us all the information we need. You can download the '2003 Regulations' form from our website (www.ico.gov.uk) or you can ask for a copy from our helpline on 08456 306060 or 01625 545745.

If you are not sure whether it is appropriate to refer your marketing-related complaint to us, please call our helpline or read part 1 of our Privacy and Electronic Communications Regulations guidance note.

What information do you need?

We will only be able to investigate complaints about faxes or emails if you give us copies of the message you received. **You should not forward all your spam to us** but you can send copies of emails with the complaints form.

Where applicable, you should also send copies of relevant correspondence between you and any other organisation (eg industry regulator or ombudsman) showing your attempts to rectify the problem.

Please send only documents that are directly relevant to your complaint.

How will you deal with my complaint?

We will examine your complaint to decide how we should handle it. When we first write back to you we will give you a reference number that you should use whenever you contact us about the problem. If we need more information from you, we will write and let you know.

If we decide to investigate your complaint, we will usually contact the organisation concerned. This may solve the problem, and if so we will let you know what has happened. We aim to deal with all complaints within a reasonable time, but will let you know if there is going to be a long delay.

If we think that we cannot take your complaint further, we will let you know.

You can get details about our response times from our helpline on 08456 306060 or 01625 545745.

What will happen to my supporting documents?

We'll scan your documents and keep them electronically. In most cases, we'll destroy the paper documents you send us after six months, so only send us copies not the original documents. If we need these later on, we'll let you know.

If you cannot give us copies, you should make sure you ask us to return your original documents. You can do this in section 15 of the complaint form. **You must make it clear each time you send us something if you would like us to return it to you.**

If my complaint is upheld, will the organisation be punished?

If we think the organisation has breached the regulations, we can ask them to put things right, but we cannot punish them for breaking the law.

Our priority is to get the organisation to change the way it works so that it complies with the regulations in future.

Organisations will usually agree to put things right, but if they do not, and the case is a serious one, we can order them to do so.

If my complaint is upheld, will I be entitled to compensation?

We have no powers to award compensation. If you have suffered a loss because an organisation or individual has broken the law, you may be entitled to compensation, but you must claim this through the courts.

The right to compensation applies even if you don't report the problem to us. You can make a claim to the court whether or not we have agreed that the law has been broken.

For more information, please see our guidance note 'Claiming compensation', which is available from our website (www.ico.gov.uk) or by calling our helpline on 08456 306060 or 01625 545745.

What happens when an organisation will not rectify the problem voluntarily?

Most organisations agree to put problems right when we bring them to their attention. If they do not, we may consider taking formal legal action, such as issuing an enforcement notice ordering them to do so. An enforcement notice is a legally binding document that sets out what an organisation must do (or stop doing) to comply with the law. We will take into account various factors when deciding whether to issue a notice. These include:

- the seriousness of the problem;
- any damage or distress that you or anyone else has suffered; and
- the cost to the organisation of putting things right.

What if I disagree with the outcome of my complaint?

If you are dissatisfied with the outcome of your complaint, you should let us know as soon as possible and certainly within six months of our final letter to you. For more information, please call our helpline on 08456 306060 or 01625 545745.

11 Telephone call (live or automated) and fax complaints only

Is the number registered with the Telephone Preference Service (TPS) or Corporate Telephone Preference Service (CTPS)?

Yes No

Date of registration: / /

Is the number registered with the Fax Preference Service (FPS)?

Yes No

Date of registration: / /

12 Was the message diverted to you from another number or email address?

Yes No

If 'yes' please give details. We may need to discuss this with you in more detail later.

13 Has receiving these messages had any practical effect on you?

(eg prevented you receiving urgent messages, incurred costs)

Yes No

If 'yes' please give details.

14 Supporting documents

For fax and email complaints we will not be able to investigate unless you give us:

- copies of the marketing communication you received.

In all cases please send:

- copies of correspondence between you and the organisation or individual concerned in which you objected to receiving such messages or otherwise tried to solve the problem.

Send only documents that are directly relevant to your complaint.

- If you send us too many documents or irrelevant documents, we may return them and ask you to send only the relevant ones.
- If you do need to send a lot of documents, please clearly mark the relevant parts. If you do not, we may return them and ask you to do this.
- You should also send us copies of relevant correspondence between you and any other organisation (for example, Citizens Advice, an industry regulator or ombudsman) showing your attempts to solve the problem.

15 Important information about your supporting documents

We will scan your documents and hold them as electronic records. In most cases, we will destroy the paper documents you send us after six months. You should send us only **copies** of these documents and make sure you keep the originals in case we need them later.

If you cannot give us copies and you would like us to return your documents, please tick here.

Each time you send us something, you must make clear whether you would like us to return it to you.

16 Please list the supporting documents you are sending to support your complaint.

This will help us check we have all the information you sent us. Do not just write 'see attached'.

17 Declaration

- I understand that, during any necessary investigations, you may need to disclose the details I have provided to the organisation or person I am complaining about to enable them to respond properly.
- I have clearly indicated any information that I do **not** want you to pass on.
- To the best of my knowledge I have given you accurate information about this complaint.
- I understand that your policy is to destroy documents relating to complaints after six months. I have clearly indicated those documents that you should not destroy and should return to me.
- I have listed all the documents I am sending with this form.
- I have read the leaflet 'The Privacy and Electronic Communications (EC Directive) Regulations 2003 – When and how to complain about electronic marketing messages'. I understand that you have no powers to punish an organisation for any likely breach of the regulations and that you cannot award compensation.

Signature

Date

**This declaration should be signed by the person making the complaint.
If this is not possible, please explain why.**

18 Please now send your form and supporting documents to:

The Information Commissioner's Office, Case Reception Unit,
Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Notes:

If you would like to contact us please call 08456 306060, or 01625 545745 if you would prefer to call a national rate number.

e: mail@ico.gsi.gov.uk

w: ico.gov.uk



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Wycliffe House,
Water Lane,
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