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10 February 2021

Dear Madam

**RE: Public Consultation: - Marketing Code of Practice for Domestic Customers**

We refer to the above public consultation which was published on 14<sup>th</sup> January 2021.

We note that the consultation relates to proposed changes to the Utility Regulator's Marketing Code of Practice for Domestic Customers.

Having had an opportunity to review the consultation document and associated Code of Practice, we felt that it may be useful to share some overarching thoughts which the Utility Regulator may wish to give consideration to. You will note that our comments, detailed below, relate to the Privacy and Electronic Communications Regulations (PECR) and the UK GDPR both of which require legislative compliance.

**The Privacy and Electronic Communications Regulations (PECR)**

The Privacy and Electronic Communications Regulations (PECR) sit alongside the Data Protection Act and the UK GDPR. The regulations give people specific privacy rights in relation to electronic communications such as marketing calls, emails, texts and faxes. They also impose rules regarding the use of cookies (and similar technologies), customer privacy and keeping communications services secure.

Upon personal of the Marketing Code of Practice it is apparent that section 5 of the code relates to telephone and marketing sales. It should be noted that

regulations 21, 21A and 21B within the PECR make specific provisions for live marketing calls which organisations must abide by.

Any supplier/agent undertaking live marketing calls must give consideration to the relevant sections within the PECR. It is important to note that the regulations stipulate that companies must not make unsolicited live calls:

- to anyone who has told you they don't want your calls;
- to any number registered with the TPS or CTPS, unless the person has specifically consented to your calls – even if they are an existing customer (unless the call is in relation to pension schemes and you meet a strict criteria)
- for the purpose of claims management services, unless the person has specifically consented to your calls

Similarly, we note that Section 9 of the Marketing Code of Practice relates to marketing by Electronic Communication. Again, regulation 22 of the PECR imposes specific provisions upon this area of marketing. In short, regulation 22 states that one must not send electronic mail marketing to individuals, unless:

- they have specifically consented to electronic mail from you; or
- they are an existing customer who bought (or negotiated to buy) a similar product or service from you in the past, and you gave them a simple way to opt out both when you first collected their details and in every message you have sent.

The term 'electronic mail' has an intentionally broad meaning that includes new forms of messaging. It means that stipulations above apply to emails, texts, picture messages, video messages, voicemails, direct messages via social media or any similar message that is stored electronically.

For further information with respect to the PECR regulations please see our guidance [here](#).

## **UK GDPR**

In addition to the PECR regulations, organisations must also ensure compliance with UK GDPR and the Data Protection Act when processing an individual's personal data. Both pieces of legislation impose obligations upon businesses to process personal information in a fair, proper and transparent manner. The UK

GDPR outlines seven key principles which should lie at the heart of an organisations approach to processing personal data:-

- Lawfulness, fairness and transparency
- Purpose limitation
- Data minimisation
- Accuracy
- Storage limitation
- Integrity and confidentiality (security)
- Accountability

When processing personal information, it is important that organisations identify the minimum amount of personal data required to fulfil its purpose. Additional information should not be held or processed. Organisation's should also periodically review their processing to check that the personal data held is still relevant and adequate for it's documented purposes.

Furthermore, as per the UK GDPR principle of storage limitation, it is important that organisation's do not retain personal data for longer than is required. When holding personal information, organisation's must be able to justify the duration of its data storage and ensure that any personal data that is no longer needed is deleted accordingly.

## **Training**

Finally, we note section 2.3 of the Code of Practice relates to an obligation upon suppliers to provide or procure appropriate training for all staff who communicate with customers. It seems such training should take into account legislation, regulations and consumer protection law. In light of the comments above, the Utility Regulator may wish to consider advocating training with respect to UK GDPR/data protection and PECR.

Whilst the purposes of this consultation are primarily surrounding the proposals to allow suppliers to use annual bill or annual cost quotations with consumers; our comments largely relate to PECR and the UK GDPR. Compliance with these pieces of legislation are fundamental to a domestic Marketing Code of Practice for energy suppliers and these areas should be given consideration under this review.

We are happy to discuss these areas further and to provide clarity on the areas outlined above. If you believe a meeting with our office would be beneficial, please do not hesitate to contact our Belfast Office at [ni@ico.org.uk](mailto:ni@ico.org.uk).

Yours sincerely



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