

## FACT SHEET 3

### Contacting your customers - the legal issues



There's lots of great reasons to stay in regular contact with your customers and contacts. However, there are a number of legal issues you should be aware of:

#### 1. Privacy and Electronic Communication EU Directive (2003)

In conjunction with the British Code of Advertising, Sales Promotion and Direct Marketing (the 'CAP code'), this deals with the sending of direct marketing messages by email, fax, phone or text message and carries a possible fine of £5000 for each breach. Although there are more detailed considerations to take into account, the very basics of the law are:

- You cannot send unsolicited marketing messages to individuals, except where you have obtained their contact details in the course of a sale or negotiations for a sale. Another exception would be if the individual has been made aware they may receive marketing messages, but has not objected (through a simple and clear method, eg an opt-out tickbox).
- You can send unsolicited emails to a 'corporate subscriber'. This group includes limited companies in the UK, limited liability partnerships in England, Wales and N Ireland or any partnerships in Scotland. It also includes public sector agencies and bodies. So, sole traders are treated the same as individuals.
- Any marketing messages must clearly identify the sender, and provide a means of opting out of future messages. In the case of email, this would be an unsubscribe link, and for a text message the addition of a line such as TOSTOPMSGTXT'STOP'TO(*insert mobile tel no or short code*). Simply sending a marketing message containing an opt-out mechanism as the first point of objection does not comply with legal requirements.

For a full version of the Directive go to [http://www.ico.gov.uk/upload/documents/library/privacy\\_and\\_electronic/detailed\\_specialist\\_guides/guidance\\_part\\_1\\_for\\_marketers\\_v3.1\\_081007.pdf](http://www.ico.gov.uk/upload/documents/library/privacy_and_electronic/detailed_specialist_guides/guidance_part_1_for_marketers_v3.1_081007.pdf). Go to [http://www.asa.org.uk/asa/codes/cap\\_code](http://www.asa.org.uk/asa/codes/cap_code) for more info on the CAP Code.

#### 2. Mailing Preference Service

Individuals can register with the MPS to prevent unsolicited marketing mail. It only applies to residential addresses, so you can send unsolicited mail to any business. Access to the suppression list can be obtained either by buying the list or via a licensed list holder. For more info go to [www.mpsonline.org](http://www.mpsonline.org)

#### 3. Telephone Preference Service

Both individuals AND businesses can register with the TPS if they don't want to receive unsolicited marketing calls. Again, access to the suppression list can be obtained either by buying the list or via a licensed list holder. For more info go to [www.tpsonline.org](http://www.tpsonline.org)

#### 4. Fax Preference Service

Again, both individuals and businesses can register not to receive unsolicited marketing faxes. Access to the suppression list is obtained in the same way as above. For more info go to [www.fpsonline.org.uk](http://www.fpsonline.org.uk)

#### 4. Companies Act (1985)

Following an update in 2006, every company must display its Company registration number, place of registration, and registered office address on its emails and website.

#### 5. Gambling Act 2005

This will apply in conjunction with the CAP Code if you are running a competition or prize draw to act as an incentive to customers to join your mailing list. Put simply, you want to avoid your promotion being defined under the Act as a lottery, betting or gaming. The good news is that offering free entry into a prize draw in return for someone's contact details or feedback means you side-step the Gambling Act. Even better is that you can offer free entry into a prize draw when a customer makes a purchase, provided the price of the product is not increased to cover the cost of the prize.

In both cases, it's highly advisable to create a basic set of terms and conditions of the draw and make them easily accessible to customers before or at the time of entry. That could be something as simple as having them on the back of the entry card, or displayed on a counter. See our Factsheet no1 for suggested terms and conditions.

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## 6. Data Protection Act

Under the DPA you must establish if you need to register as a Data Controller. As a general rule of thumb, if you hold personal information for staff admin (including payroll), advertising and marketing your own business, or accounts and records (in the case of some not-for-profit organisations), you will probably NOT need to register. However, it's best to check directly with the Information Commissioners Office. We at Contact Marketing Solutions Ltd are registered as Data Controllers.

**Remember...***As part of our services, we'll help ensure you stay on the right side of the law with all your customer communications.*

**Disclaimer:** *This information does not constitute specific legal advice, but is intended for guidance only. You should consult a suitably qualified lawyer on any specific legal matter.*



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