

## Supplementary written evidence submitted by the Information Commissioner's Office (ADM0031)

During her attendance at the House of Commons Science and Technology Committee's evidence session on 23 January 2018, the Information Commissioner was asked about the differences between political campaigning and market research. She agreed to send further detail including how the Data Protection Act 1998 (DPA) and Privacy and Electronic Communication Regulations (PECR) apply to each activity.

First, it is worth clarifying our understanding of the term 'political campaigning' in this context. The DPA is concerned with the processing of personal data. Much political campaigning does not involve the processing of personal data so does not fall within our regulatory remit. Where it is directed to particular individuals, the promotion of aims and ideals, such as political viewpoints, is considered to be direct marketing. We have published [guidance on direct marketing](#) as well as more specific [guidance intended for those involved in political campaigning](#).

The DPA covers all processing of personal data including both direct marketing and market research but the rules on direct marketing by electronic means contained in PECR, do not apply to market research. Our guidance on direct marketing provides the best explanation of this:

"The direct marketing rules will not apply if an organisation contacts customers to conduct genuine market research (for example the purpose is to use market research to make decisions for commercial or public policy) or contracts a research firm to do so, as this will not involve the communication of advertising or marketing material. However, organisations conducting market research will still need to comply with other provisions of the DPA, and in particular ensure they process any individually identifiable research data fairly, securely and only for research purposes.

"However, an organisation cannot avoid the direct marketing rules by labelling its message as a survey or market research if it is actually trying to sell goods or services, or to collect data to help it (or others) to contact people for marketing purposes at a later date. This is sometimes referred to as 'sugging' (selling under the guise of research). If the call or message includes any promotional material, or collects data to use in future marketing exercises, the call or message will be for direct marketing purposes. The organisation must say so, and comply with the DPA and PECR direct marketing rules."<sup>1</sup>

Our guidance on political campaigning contains a summary table of the methods explaining the rules around direct marketing for political purposes within the DPA and PECR. This is reproduced as an annex to this letter.

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<sup>1</sup> ICO's Direct Marketing Guidance Pg. 12

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I hope this information is useful to the committee. We are happy to provide further information where helpful.

*February 2018*

### Annex

Communication method	In summary, organisations may use this method to promote a political party, candidate or referendum campaign...
Post addressed to particular individuals	...unless the individual has asked the organisation not to write to them or not to send them marketing material by post. In addition, electoral law <sup>1</sup> will set out whether a political party, candidate or referendum campaigner has the right to send a Freepost mailing. This specific right applies even if the individual has asked the organisation not to contact them.
Email/text and other messages to mobile phones/voicemail	...where the individual has consented to contact of that sort from the organisation for those purposes.
Fax	...where the individual has consented to contact of that sort from the organisation for those purposes.
Phone calls	...unless the organisation has grounds for believing the individual would not want it to contact them, such as TPS registration.
Automated phone calls	...where the individual has consented to contact of that sort from the organisation for those purposes.
AND in every case	...the organisation must normally identify itself in the communication and provide contact details to allow individuals to contact it and easily opt out of unwanted direct marketing. Electoral law also requires specific details to appear on election publications. <sup>2</sup>

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<sup>2</sup> ICO's Guidance on Political Campaigning pg.3