

Data Protection for Hospice Fundraising and Communications

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Speaker: David Taylor, Data Protection Consultancy Limited
david@dataprotectionconsultancy.com



Please ask questions
at any time

Some of what we will be covering



Definitions

Data subject	• A living individual who the data is about (e.g. the supporter)
Data controller	• The “legal person” who has determined how the data will be used (the charity)
Corporate subscriber	• Email address or phone number owned by a Ltd Co or Plc (not sole traders)
Private subscriber	• Email address or phone number owned by a private individual, sole trader or LLP
Marketing	• Anything that promotes a product, service, aim or ideal (this includes fundraising)
Fundraising	• Any communication that promotes a charitable event or directly asks for charitable support
Consent	• A positive action taken to agree to something specific
Service based coms	• A message containing non-promotional information essential to contract

Which laws and regulations apply

Privacy and Electronic Communications Regulations (PECR)

UK GDPR & Data Protection Act 2018

Telephone Preference Service ((B)TPS)

Mail Preference Service (MPS)

Fundraising Preference Service (**not** law)

Over the last 10 years more fines for marketing breaches than anything else

Marketing – anything that promotes a product, service, aim or ideal (fundraising = aim)

Service based

You must have told people how you will send service communications.



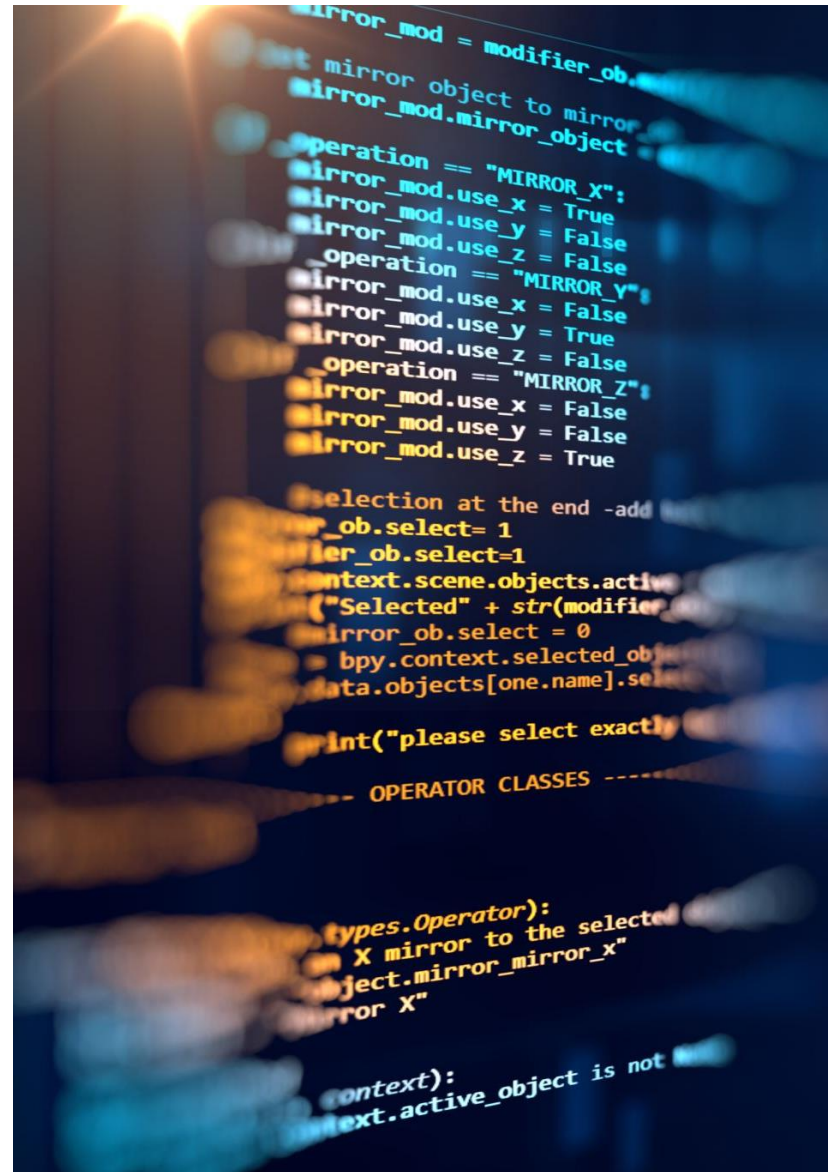
Marketing

Should be no surprises!



Data Reform Bill (DPA V3)

- Soft opt-in will be extended to fundraising (currently explicit consent is required)
- The requirement to obtain consent for cookies will be relaxed in relation to a broader class of on-site purposes such as analytics, but not for cross-site tracking eg cross site targeted ads
- Specific rules around social media targeted ads, custom audiences and direct marketing via social media





Privacy Notices

- **Be clear from the point of first contact about how you intend to use data for marketing/fundraising**
 - Transparency is the key to compliance and avoiding enforcement action
 - Clear accessible privacy notices are a must if you want to avoid enforcement action
 - Be transparent about what they can expect to receive
 - Define the channels you intend to use and allow the supporter to choose (email/SMS/phone/post)
 - Differentiate between marketing and fundraising
- **Treat the supporter fairly**
 - Don't bombard them with messages
 - Always make sure they know how to opt-out (make it as clear and as easy as possible)
 - Wealth screening requires not only robust transparency but also, in some cases, consent

Marketing under the DPA – apply the law(s)

Data Protection Act & UK GDPR

Comply with the data protection principles provided within the relevant legislation (play fair)!

How is the communication sent?

PECR applies to electronic marketing. Less stringent rules for postal marketing and telesales calls **and corporate subscribers**

Lawful processing

Ensure that you have a legal basis for processing (can we lawfully send the marketing communications?). Is consent or legitimate interest valid?

Data protection impact assessments

In areas of risk, running and documenting a DPIA will help to comply with the DP principles, including accountability.



Marketing or not?

- Surveys that contain no promotional content
- Email footers promoting your annual challenge event
- Thank you letter to a supporter for their donation
- Message to a supporter with information about the arrangements for a challenge event they are taking part in
- Personal hand written letter to a potential major donor asking if they would meet with you to discuss their potential support of the charity

Distinguishing communications

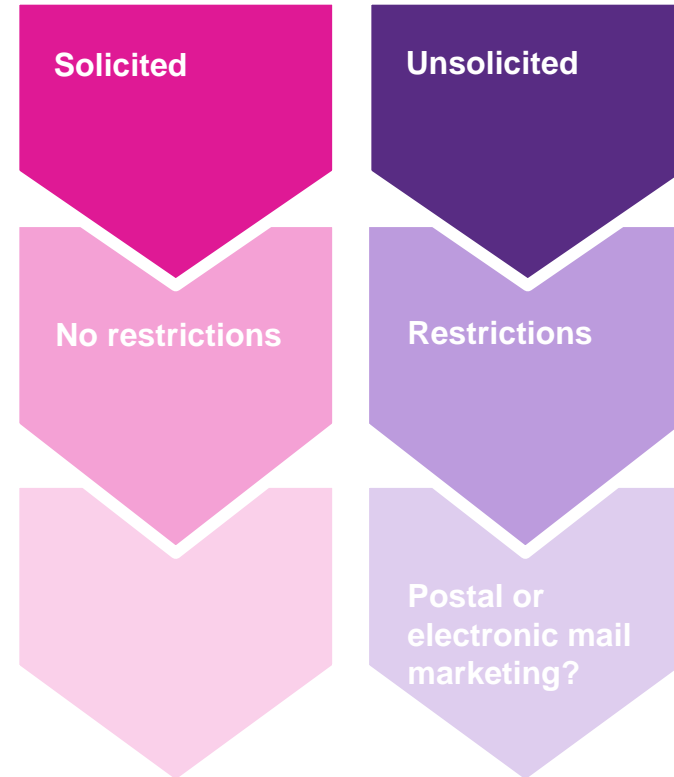
What type of communication is being sent?

Solicited

- Individual requesting information, making an enquiry (could be about an event or challenge) or a service
- Subscribed to a marketing list
 - No restrictions

Unsolicited

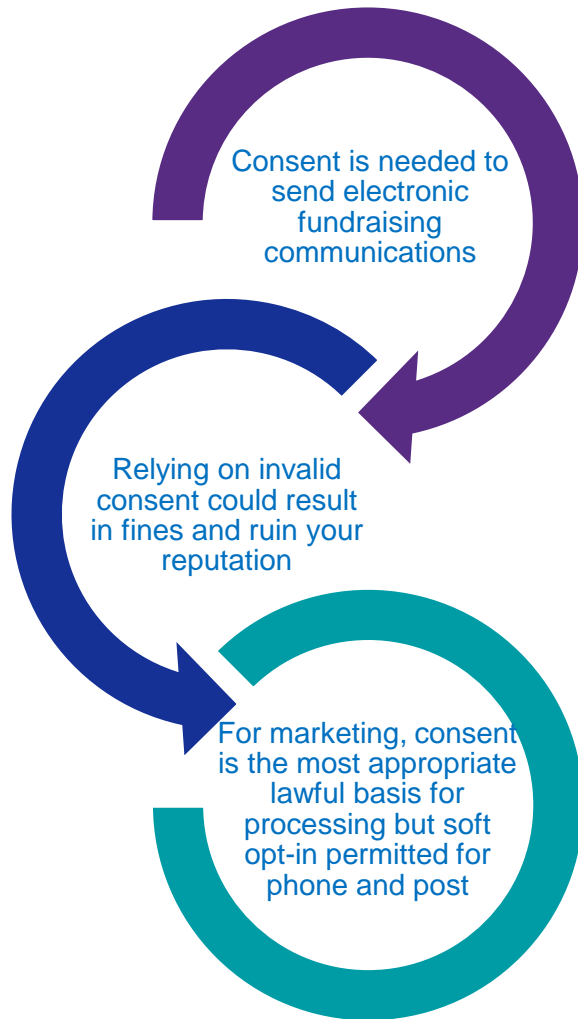
- Sending any communication that has not specifically been requested
 - Restrictions vary - is it postal or electronic mail marketing or fundraising?
 - Consent may required for electronic mail marketing if you don't meet the soft-opt in standard and always for fundraising



Legal basis and restrictions

Communication	Is consent required?	Further considerations
Postal	No	<ul style="list-style-type: none"> - Comply with data protection legislation - only process information for the purpose for which it was collected. - If an individual objects to, or opts-out of, the mailing they must be taken off the mailing list. - Must screen names against the Mail Preference System. - Provide the opportunity to opt-out at every communication.
Telephone	No, but there must be a pre-existing relationship. COLD CALLING IS PROHIBITED even if you apply the TPS	<ul style="list-style-type: none"> - You MUST have told them you intend to make marketing (fundraising) phone calls when you first captured their number and gave them the opportunity to opt out. - You should consider their TPS status on a case by case basis (specific to fundraising) - Always give the individual the opportunity to opt-out of further calls. Recording such consent is key. - You can cold call corporate subscribers but must check BTPS - Any voicemails left will be considered as “electronic mail” and can only be left if you have the supporters explicit consent, as detailed directly below.
Email/text	No, unless includes fundraising content	<ul style="list-style-type: none"> - Soft opt-in MUST provide opt-out at the point you capture email address or mobile number - Consent must be freely given, specific, informed, recorded, etc. - You must consider the supporters’ capacity to provide “informed” consent. - May be able to use soft opt-in (legitimate interest) - Different rules for corporate & private subscribers

Why the ICO prefer consent



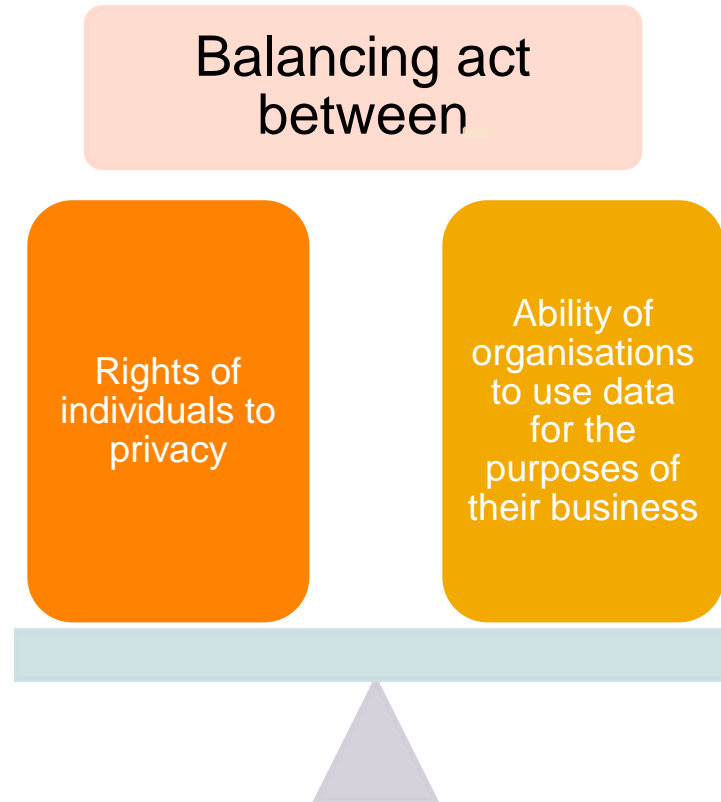
Benefits:

- ✓ Gives individuals choice
- ✓ Gives individuals control
- ✓ Builds supporter confidence
- ✓ Higher open rate

Penalties:

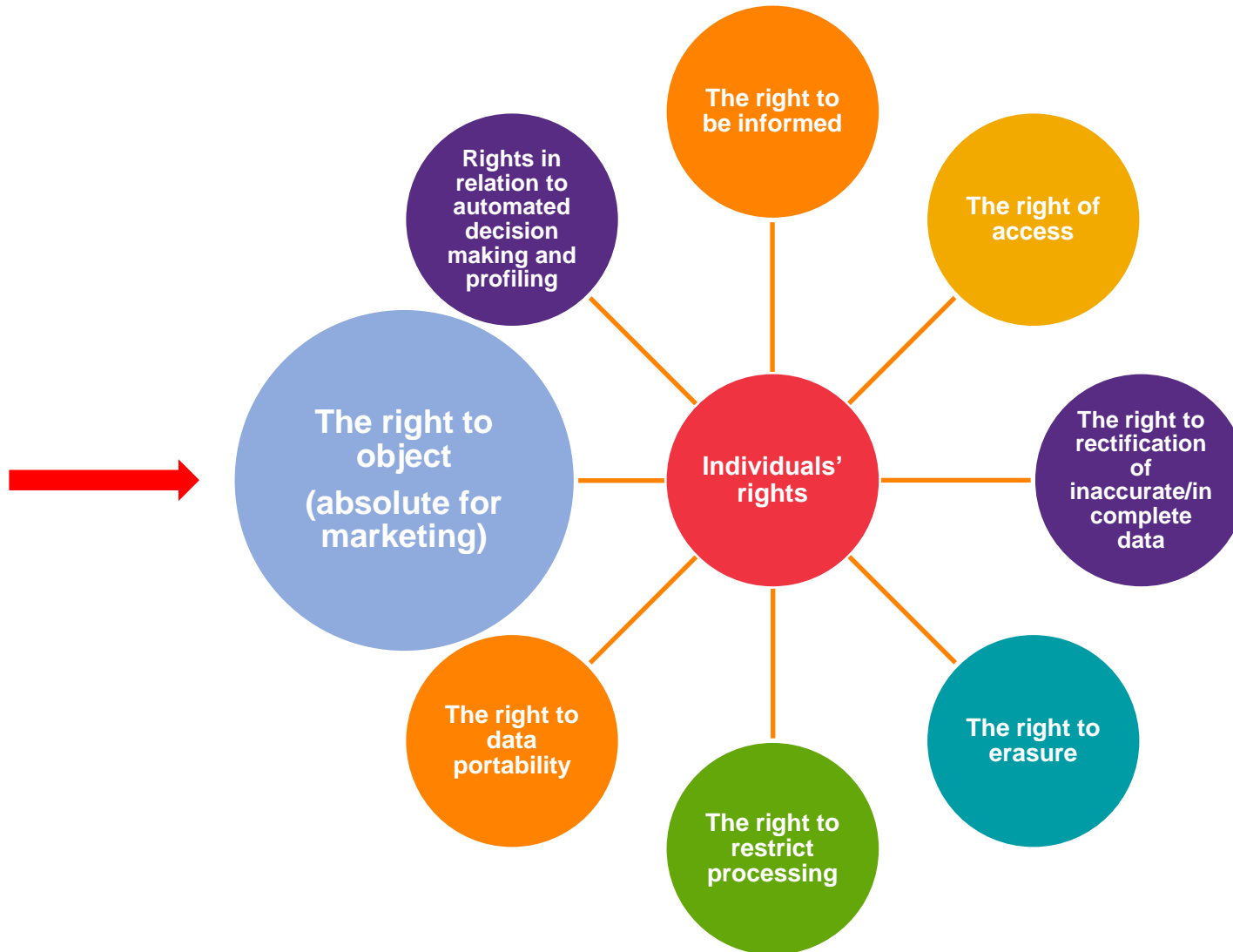
- X Fines of up to £17.5 million, or 4% of total worldwide annual turnover, whichever is higher
- X Erodes trust

Electronic marketing without consent (legitimate interest) AKA soft opt-in



- ✓ Soft opt-in **only** applies to commercial marketing and cannot be used for fundraising
- ✓ You must either be in negotiations or a contract with the person
- ✓ Provided information on the type marketing you will send and how you will send it (email, sms)
- ✓ Have offered a clear opt-out **at the point you captured the email address/mobile number**

Individuals' rights



Managing consent and unsubscribes

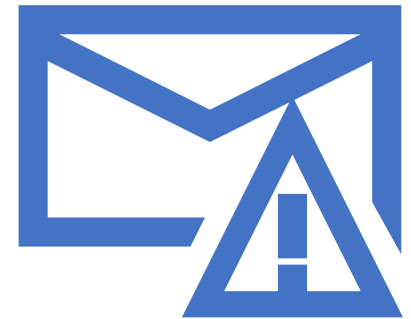
- Ongoing duty to manage consent
- Offer individuals preference management tools like customer service phone numbers or privacy dashboards to be able to easily access and change their consent preferences
- Review consent regularly – has the purpose for which consent was changed?
- **Monitor engagement (are emails being opened) refresh consent if emails not opened after a number of campaigns**
- Remind individuals of their right to withdraw consent (unsubscribe) and ensure proper withdrawal procedures in place
- Maintain unsubscribe – do not market list

Practical suggestions

- ✓ Privacy dashboard
- ✓ Opt-out reply to every correspondence
- ✓ Unsubscribe link in an email
- ✓ Opt-out phone number, address or web link printed in a letter
- ✓ Include details of right to withdraw consent in privacy notices and consent requests

Keeping data up to date and data cleansing and enriching

- Requirement to keep data up to date does not broadly apply to marketing data
- Enriching marketing data is likely to be a serious breach unless you can evidence a fair and legal requirement to do so (legitimate interest is unlikely to be compliant). The supporter gave you the data they felt comfortable sharing, and enriching this (eg adding a phone number) would be a breach
- Could be viewed as secret processing
- Only because data is in the public domain, you cannot record it (make yourself the data controller). You are likely to need consent and will need to notify the data subject that you are now processing this data and why (eg wealth screening)
- ICO took enforcement action against 13 charities for secret data enrichment





Marketing to gone-aways

- ICO have just fined Hello Fresh £140,000 for amongst other marketing breaches, unfair marketing to their gone-away customers
- ICO stated that Hello Fresh had not been clear that they would continue to send marketing for 2 years to this audience
- The ICO also indicated that they thought 2 years was excessive

Do you still want to receive the ICO newsletter?

We want to be sure you only get email updates from us if you want to. We're asking all our newsletter subscribers to answer the question – “Do you still want to get the ICO newsletter?”. **Those who answer no will be unsubscribed immediately. Those who do not answer before July 2022 will also be unsubscribed.**

So, if you wish to keep hearing from us, let us know now by [visiting our new preference centre](#).

You can also let us know more about what subjects and sectors you are interested in hearing about – these can be changed at any time.

We have recently updated our [privacy notice](#) to reflect the creation of the preference centre.

Don't forget, if you want to keep hearing from the ICO, you must answer **YES** to the question “do you still want to receive the ICO newsletter?”

ICO newsletter preferences



Do you still want receive the ICO newsletter?

Answer: ☐ Yes
☐ No

Personal information

Email

First name

Last name

Email update preferences

The ICO sends out a newsletter once a month that gives a round up of our work, including news on our latest enforcement action and guidance about how to keep your data safe. We also send ad hoc newsletters throughout the month. The content of these updates is similar to the above but may be focused on one subject and will be sent out as soon as possible after work has happened. When you sign up to the newsletter you are consenting to receive all relevant ICO email updates.

Please indicate below which of these products you wish to receive?

I want... ☐ BOTH
☐ Monthly

SUBMIT

Remember, over the last 15 years the ICO have issued more fines for marketing breaches than for any other single type of breach.

Questions

