

/ Legitimate Interests Assessment (LIA) Template

Why are Legitimate Interest Assessments (LIAs) important?

Legitimate interest is the most flexible lawful basis, meaning it could be applied to a variety of processing activities including some direct marketing activities.

Given its flexibility, it is up to you (the organisation) to determine whether it is an appropriate lawful basis for a particular processing activity. In relying on legitimate interests, you accept greater responsibility in protecting and respecting your customers' privacy. Completing an LIA is therefore needed to ensure that your legitimate interest is balanced against the rights and freedoms of individuals.

This demonstrates your accountability and a privacy-first approach to your direct marketing.

When do we have to complete an LIA?

You must complete an LIA for each new activity where you have chosen legitimate interests as a lawful basis. You must complete this *prior* to the activity starting.

What direct marketing activities are in scope of an LIA?

Data protection law doesn't dictate what constitutes a legitimate interest, however Recital 47 of UK GDPR indicates that it may be an appropriate lawful basis in certain direct marketing scenarios:

"The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest".

The DPA 2018 defines direct marketing as:

"the communication (by whatever means) of advertising or marketing material which is directed to particular individuals".

The same meaning is given to direct marketing under PECR 2003.

It's not just about the act of sending messages to people. Direct marketing purposes are also in scope of the legislation. This means the same rules apply to processing activities that facilitate the sending of direct marketing messages (such as profiling).

Below are some examples of processing personal data to send direct marketing and processing personal data for direct marketing purposes, where legitimate interest could be an appropriate lawful basis:

| Direct marketing | Direct marketing purposes |
|--|---|
| Sending direct marketing by post | Profiling for direct marketing purposes |
| Sending direct marketing emails or texts to existing customers (providing all “soft opt-in*” requirements are met) | Purchasing third party postal data for direct marketing |
| Sending direct marketing emails or texts to “corporate subscribers” | Sourcing personal data from public sources, such as Open Electoral Register (OER) for direct marketing purposes |
| Live phone calls to individuals who are not registered on the TPS/CTPS | |

*N.B. Legitimate interests and soft opt-in are not the same; the former is a lawful basis under Article 6 of UK GDPR, and the latter is an exception to consent under Regulation 22 of PECR for electronic mail only, and under specific conditions. However, both operate on an opt-out mechanism, and they are similar in principle. It is not legally required for organisations to complete an LIA when relying on soft opt-in, but they may find it helpful to do so.

Author’s note: Template contents in black are the explanatory notes designed to help you complete each section in your own words.

If you have any questions or would like support with this LIA, please email legaladvice@dma.org.uk.

You can find the LIA template on the next page.

| | |
|---|----------------------------|
| <i>To be completed by the respondent</i> | |
| Title of the activity: | Date assessment completed: |
| Name and job title: | |
| 1. Purpose | |
| In this section, you will identify the purpose of your direct marketing activity | |
| 1.a. What is your legitimate interest – summarise the direct marketing activity. | |
| 1.b. What does this direct marketing activity aim to achieve and why? | |
| 2. Necessity | |
| In this section, you will determine the necessity of this direct marketing activity. | |
| 2.a What personal data is being processed as part of this direct marketing activity? Is it proportionate to your purpose? | |
| 2.b Is there another way to achieve your purpose? | |

| | |
|---|---|
| 2.c. Consider data minimisation. Is there a less intrusive way of achieving the legitimate interest? | |
| 3. Balancing In this section, you will explain how you will uphold the rights and interests of individuals and consider other fundamental rights. | |
| 3.a. What is the nature of your relationship with the individuals? | |
| 3.b. Explain how and when you obtained this personal data. | |
| 3.b(1). If you obtained this personal data from a third party, what due diligence did you conduct on that third party? | See the ICO's Direct Marketing Guidance here for further details. |
| 3.b(2). If you obtained this from a third party, do you have a written contract with them? | |

| | |
|---|---|
| <p>3.b(3). If you obtained this from a third party, how are you complying with Article 14 of UK GDPR?</p> | <p>See ICO guidance on the right to be informed here.</p> |
| <p>3.c. What privacy information was given to individuals at the time their personal data was collected? Were they given the opportunity to opt-out? Can you evidence this?</p> | |
| <p>3.d. Would individuals expect to receive this direct marketing or expect this processing to take place? Explain why.</p> | |

| | |
|---|--|
| <p>3.e. Is the processing behind this direct marketing activity widely understood? Consider, for example, use of any new/emerging technologies.</p> | <p>If so, there are likely to be high risks to the individual that may require a data protection impact assessment (DPIA).</p> <p>You can find our DPIA template here.</p> <p>With regards to AI specifically, further information can be found in the ICO Guidance on AI and Data Protection.</p> |
| <p>3.f. Can individuals object to the processing?</p> | |
| <p>3.g. Outline how you will be complying with relevant legislation. (E.g., DPA 2018, UK GDPR, PECR)</p> | |
| <p>3.h. Outline how you will be complying with relevant industry guidelines and codes of practice, for example, screening against the MPS</p> | <p>For example, the DMA Code Fundraising Code of Practice ASA CAP Code Gambling Commission LCCP</p> |

| | | |
|--|------------|----------|
| <p>3.i. Are there any benefits to individuals in this direct marketing activity? Conversely, what are the risks?</p> | Benefits | Risks |
| <p>3.i.(1). For each risk, what is the likelihood and severity of impact?</p> | Likelihood | Severity |
| <p>3.i.(2). How will you mitigate each of these risks?</p> | | |

4. Outcome

This section is to document the outcome of this assessment based on the above information.

To be completed by the approver

4.a. Taking into account parts 1-3, what is the outcome of this assessment?

Assessment status:

Date:

Name and job title:

Appendices

Supporting information

a. As members of the DMA, you must conduct your direct marketing activities in accordance with The Code: <https://dma.org.uk/the-dma-code>

b. For further information and guidance, visit the ICO's website:

Legitimate interests guidance: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/legitimate-interests/>

Direct marketing guidance and resources: <https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/>