

Agenda Item 6: Legitimate Interests Assessment for sending marketing communications to supporters by mail

Meeting	Fundraising Committee
Agenda item	6
Prepared by	Peter Reynolds
Date prepared	20 Apr 2018
Date of meeting	23 Apr 2018
Action requested	Approval

Purpose	To seek input into and approval of Concern UK's legitimate interests assessment (LIA) for sending marketing communications to supporters.
Key points	<p>Recital 47 of the General Data Protection Regulation (GDPR) and Information Commissioners Office (ICO) guidance states that direct marketing may be justified under the legitimate interests legal basis for processing. Electronic communications such as email and SMS are also covered by Privacy and Electronic Communication Regulations, 2003 (PECR), which states that they require opt-in consent.</p> <p>Therefore the Fundraising Committee has approved the following approach to the lawful basis of processing for direct marketing communications:</p> <ul style="list-style-type: none"> • Phone, SMS and email: Opt in consent • Mail: Legitimate interests
Recommended outcome	Approval of this LIA.
Status of discussions to date	<p>This paper has been prepared in consultation with the Senior Management Team. It has been reviewed by our data protection advisors Opt-4.</p> <p>We have also consulted the following guidance:</p> <ul style="list-style-type: none"> • 'GDPR: Lawful basis for processing: Legitimate Interests' published by the Information Commissioners Office • 'GDPR: The Essentials for fundraising organisations' published by the Institute of Fundraising with solicitors Birch am Dyson Bell)
Implications	<ul style="list-style-type: none"> • Budget/cost • Accountability • Legal <ul style="list-style-type: none"> • Compliance with data protection legislation and the GDPR is vital to protecting Concern UK's reputation with our supporters and the wider public

	<ul style="list-style-type: none"> • Substantial fines have been imposed by the ICO on organisations that fail to comply with data protection legislation and regulation. Enforcement is likely to increase under GDPR. • A reduction in the numbers of donors contactable by direct mail and therefore less income raised
Risk assessment	<ul style="list-style-type: none"> • Failure to put in place a LIA in place would leave Concern UK exposed if investigated by the ICO or Fundraising Regulator. • Note that the Fundraising Regulator recommends that charities publish their LIAs on their websites.

Background and rationale for recommended approach

Postal appeals are an important source of income for Concern UK, accounting for c. £800,000 (including Gift Aid) in 2018. Applying a Legitimate Interests justification for mailed direct marketing will allow Concern to maintain an 'opt out' approach to this channel. The alternative legal basis, marketing consent, would require an expensive exercise in securing new opt in consents. It would inevitably result in a major reduction in the numbers of donors we are able to contact and a corresponding reduction in appeal income levels.

Processing for direct marketing purposes is specifically mentioned in Recital 47 of the GDPR and there are clear indications that a substantial majority of charities will adopt this approach for mailed direct marketing, including the DEC and all 13 DEC members.

The ICO has recently published a guidance document on Legitimate Interests within the GDPR and advises that processing will be lawful where:

'Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which'.

The guidance also states that: *'If you choose to rely on legitimate interests, you take on extra responsibility for ensuring people's rights and interests are fully considered and protected'*. In practice this means that the Data Controller is required to consider the balance between its own legitimate interests and the rights and interests of the individual through a Legitimate Interests Assessment (LIA)

The ICO provides guidance for how organisations should conduct the balancing exercise and provides a template for the Legitimate Interests Assessment (LIA). The Institute of Fundraising has published practical guidance aimed specifically at charities, including an outline of how to create a LIA. Our approach is primarily based on these information sources and on advice received from Opt-4.

The LIA format recommended by the ICO contains three key sections:

1. Purpose test: are you pursuing a legitimate interest?
2. Necessity test: is the processing necessary for that purpose?
3. Balancing test: do the individual's interests override the legitimate interest?

Evaluating supporters' reasonable expectations

Conducting the balancing test requires consideration of what donors would reasonably have expected their personal information to be used for at the time that they provided it and whether subsequent use is in line with their reasonable expectations. We are also required to assess their 'rights and freedoms', including their right to be informed about the processing in a clear and transparent way and their right to object to the marketing. We have based our thinking on three factors:

- Information provided to the supporter when they first engaged with Concern and subsequently
- Analysis of supporter complaints relating to direct mail
- Analysis of supporter donation behaviour

Information provided to the supporter when they first engaged with Concern and complaint levels

Concern UK makes clear at the first point of contact that we wish to send appeals to them, expressed through our contact permission statements. At the same time supporters are given an opportunity to opt out of postal communications. All subsequent fundraising communications include information on how supporters can opt out of further marketing contact. An example of our Fair Processing Notice is provided within the LIA that follows.

Some Concern supporters do take action to opt out of future mailed marketing contact. A Consent Audit carried out by the consultancy Wood for Trees in late 2017 found that 29% of contacts on the Concern UK database had opted out of mail. The remainder have not objected and complaints relating to postal marketing received are very low, amounting to 3 in 2017. All were resolved successfully.

Supporter donation behaviour

A key consideration is how long we feel it is reasonable to continue mailing supporters who have not responded to appeals or taken other actions supporting Concern. Analysis of Concern donor behaviour provides some context on what activity would fall within supporters' expectations.

The Consent Audit conducted by Wood for Trees at the end of 2017 showed that:

- Concern donors have an average tenure of 4 years
- A substantial number of supporters (15%) left a period of 3 or more years between giving
- Emergency appeals are the most common example of where supporters are leaving long gaps between gifts (as expected, since emergency appeal are comparatively infrequent)
- Of those supporters who 'reactivate' (defined as giving a donation 2 or more years after their previous gift), the median reactivation period is 3 years and 4 months. (i.e. 50% reactivate before that time and 50% after.)

For clarity, the majority of responders to appeals have given more recently, usually within the past 12 months, but supporters do continue give after extended periods of inactivity:

Duration since last donation (months):

Campaign	0-12 months		12-24 months		24-36 months		36-60 months		60+ months		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	
Winter Newsletter	815	86.5%	79	8.4%	24	2.5%	17	1.8%	7	0.7%	942
Spring Cash	1,517	85.2%	166	9.3%	48	2.7%	37	2.1%	12	0.7%	1,780
Summer Cash	1,762	86.4%	100	4.9%	83	4.1%	50	2.5%	45	2.2%	2,040
Summer Newsletter	860	90.9%	54	5.7%	19	2.0%	8	0.8%	5	0.5%	946
September Cash	2,160	82.4%	232	8.8%	116	4.4%	64	2.4%	50	1.9%	2,622
Christmas Cash	2,058	81.2%	289	11.4%	90	3.6%	46	1.8%	51	2.0%	2,534

Based on the LIA we have conducted, which follows in this paper, we believe that Concern UK has a legitimate interest in sending mailed appeals to our supporters and that this legitimate interest is not overridden by the interests or fundamental rights and freedoms of the data subject, based on:

- The information we provide to supporters when they first engaged with Concern in our Fair Processing Notice, with an opportunity to object provided, and in our Privacy Statement
- The fact that we provide further opportunities to opt out of contact in ongoing fundraising communications
- The low level of complaints received from supporters relating to the appeal communications we send them
- Donor behaviour, including donor reactivation periods

We believe that based on our analysis, we have a legitimate interest in communicating with supporters who have not responded to our communications for up to 4 years and that in certain circumstances we may have a legitimate interest in communicating with donors who have not responded for periods of between five and up to seven years. These MUST to be considered on a case-by-case basis and approved by the relevant member of the SMT. Two other groups, Legacy Pledgers and Concern UK Group members and local representatives are given individual consideration.

Conclusion

The above rationale provides the basis for the proposed LIA, which we believe successfully balances Concern UK's legitimate interests with the fundamental rights and freedoms of the data subject.

We will review the LIA and our approach periodically in response to new evidence as it arises.

Concern Worldwide (UK) Legitimate Interest Assessment; postal marketing communications (April 2018)

Purpose of data processing

- Concern Worldwide UK (Concern UK) is an international NGO that specialises in tackling hunger and extreme poverty among some of the world's poorest communities.
- Fundraising and marketing is a legitimate purpose for Concern UK. The GDPR is clear that direct marketing by post may be considered a legitimate interest. We wish to process supporters' personal data for the purpose of sending marketing communications to them through the post. These communications will include fundraising appeals, information about our events and fundraising activities, requests for other kinds of support such as taking campaigning actions and sharing information about Concern's work tackling extreme poverty and hunger that our donors and supporters have helped to make possible.
- Donations from our supporters play a vital role in funding our work tackling extreme poverty and, within our overall marketing programme, postal communications are very important in providing feedback on what our supporters have helped achieve through their support, asking supporters to make further donations to support this work and taking part in other actions that further our charitable objectives.
- Concern UK is committed to fulfilling its obligations under all relevant data protection legislation and the General Data Protection Regulation (GDPR). Further information about how Concern UK processes our supporters' personal data can be found in our Privacy Statement (www.concern.org.uk/privacy)

Necessity of data processing

Concern UK receives the majority of its appeal income from supporters responding to appeals that we send them through the post. Stopping this activity would have a detrimental impact on our ability to fulfil our charitable objectives and provide feedback to our supporters on what their support is helping to achieve. While Concern uses other channels to communicate with donors, for example by telephone and via email, mailed communications provide us with the greatest reach among our supporter base. Our ability to communicate with many of our supporters would be impossible without the use of posted communications.

Balancing Concern UK's legitimate interests with the rights and reasonable expectations of our supporters

In conducting this Legitimate Interests Assessment, we have also taken into account that when first engaging with supporters, we make it clear that we wish to send marketing materials to them and that they have the right to opt out of receiving such communications. We also seek to make this opt out

process as clear and easy as possible for our supporters by providing a range of ways of contacting us. We are committed to recording and complying with all such requests and have systems in place to ensure that we do so. This is an example of our standard fair processing statement:

We'd love to keep you updated about our vital work tackling hunger and how you can help transform more lives through campaigning and appeals. We always keep your details safe and we never pass them on to other organisations. You can change your preferences at any time by contacting us at enquiries.info@concern.net or by calling 0800 032 4001.

Tick to confirm we can contact you by email

Tick to confirm we can contact you by phone

Tick to confirm we can contact you by text

Tick if you do not wish to be contacted by post

A copy of our Privacy Statement is available at: www.concern.org.uk/privacy

We also provide information on how our supporters can opt out of fundraising and marketing communications, including by post, on all further fundraising communications that we send to supporters. This is our standard statement:

We would like to keep you informed about our work tackling hunger. If you prefer not to receive future communications or wish to change the way we communicate with you, please email enquiries.info@concern.net, call 0800 032 4001 or write to us at 47 Frederick Street, Belfast BT1 2LW.

Further information on how we wish to process our supporters' personal data is provided in our Privacy Statement (www.concern.org.uk/privacy).

Concern UK is fortunate to receive the support of a wide range of supporters. We recognise that the nature and duration of our supporters' engagement with Concern may influence their reasonable expectations of how and when we communicate with them. We have therefore considered a number of different supporter groups in balancing Concern UK's legitimate interests with their rights and reasonable expectations.

Audience	Concern UK's legitimate interest	Do these individuals' fundamental right override our legitimate interest?	Conclusion
<p>Supporters who have made at least one donation or taken another action in support of Concern in the last 4 years</p>	<p>We would like to send these supporters posted fundraising appeals, newsletters, information about our events and fundraising activities, requests for actions in support of our charitable objectives and other information materials about Concern's work in order to encourage donations to support our work.</p> <p>The individual would reasonably expect us to send the material because:</p> <ul style="list-style-type: none"> • They have donated to us in the past or taken other actions in support of our work • We make it clear at the point of first contact that we wish to send this type of marketing material, including via our Privacy Statement (www.concern.org.uk/privacy) and provided a clear opportunity to opt out of receiving this marketing material • We provide the option to opt out of future mailings on all further marketing materials that we send – and we have processes in place to ensure these wishes are recorded and complied with. 	<p>We believe that this activity falls within the reasonable expectations of the supporter. We have a previous relationship with them and they have not objected to receiving direct marketing.</p> <p>The material we want to send is not intrusive. There are no other reasons to believe that the individual would rather not receive it.</p>	<p>We believe that we can rely on legitimate interest for this processing and that this legitimate interest is not overridden by the interests or fundamental rights and freedoms of the data subject.</p>
<p>Supporters who have made at least one donation or taken another action in support of</p>	<p>We would like to send by post fundraising appeals, newsletters, requests for actions in support of our charitable objectives and other information materials about Concern's work in order to encourage donations to support our work.</p>	<p>The material we want to send is not intrusive and may provide information on the charitable work that the supporter has helped fund in the past.</p> <p>Analysis of the response to past fundraising appeals shows that some donors do make</p>	<p>We believe that this activity MAY fall within the reasonable expectations of our supporters, but that due to the duration of time</p>

<p>Concern between 4 and 7 years ago</p>	<p>Analysis of donations received from our supporters in response to previous fundraising appeals shows that some supporters who haven't donated in the past 4 years do recommence their support after this period of time.</p> <p>The individual may reasonably expect us to send the material because:</p> <ul style="list-style-type: none"> • They have donated to us in the past or taken other actions in support of our work • We make it clear at the point of first contact that we wish to send this type of marketing material, including via our Privacy Statement (www.concern.org.uk/privacy) and provided a clear opportunity to opt out of receiving this marketing material • We also provide the option to opt out of future mailings on all further marketing materials that we send – and we have processes in place to ensure these wishes are recorded and complied with. 	<p>donations after breaks of more than 4 years and the level of complaints received from supporters receiving postal appeals is very low and rarely relates to the quantity of mailings sent.</p>	<p>since their last engagement with us, special consideration <u>MUST</u> be given on a case by case basis and can only proceed following the approval of the member of Concern UK's Senior Management Team responsible for the activity.</p>
<p>Legacy pledgers</p>	<p>We would like to send supporters who have pledged to support Concern through a legacy at some point in the future information about our work and other marketing materials.</p> <p>The individual may reasonably expect us to send the material because:</p>	<p>We believe that this activity falls within the reasonable expectations of the supporter. We have a previous relationship with them and they have expressed the intention of supporting Concern by making a bequest in their will. The implementation of their will may only come to fruition many years in the future and we believe that in the meantime supporters expect us to communicate with them about our work and the</p>	<p>We believe that we can rely on legitimate interest for this processing and that this legitimate interest is not overridden by the interests or fundamental rights and</p>

	<ul style="list-style-type: none"> • They have donated to us in the past or taken other actions in support of our work • We make it clear at the point of first contact that we wish to send this type of marketing material, including via our Privacy Statement (www.concern.org.uk/privacy) and provided a clear opportunity to opt out of receiving this marketing material • We also provide the option to opt out of future mailings on all further marketing materials that we send – and we have processes in place to ensure these wishes are recorded and complied with. 	<p>charity’s progress. They have not objected to receiving direct marketing.</p> <p>The material we want to send is not intrusive. There are no other reasons to believe that the individual would rather not receive it.</p>	<p>freedoms of the data subject.</p>
<p>Concern local group members and local representatives</p>	<p>We would like to send these supporters posted fundraising appeals, newsletters, information about our events and fundraising activities, requests for actions in support of our charitable objectives and other information materials about Concern’s work in order to encourage donations to support our work.</p> <p>The GDPR is clear that direct marketing by post may be considered a legitimate interest.</p> <p>The individual would reasonably expect us to send the material because:</p> <ul style="list-style-type: none"> • They have donated to us in the past or taken other actions in support of our work or they have agreed to be associated with a local Concern Group that undertakes such activities. 	<p>We believe that this activity falls within the reasonable expectations of the supporter. We have a previous relationship with them and they have not objected to receiving direct marketing.</p> <p>The material we want to send is not intrusive. There are no other reasons to believe that the individual would rather not receive it.</p>	<p>We believe that we can rely on legitimate interest for this processing and that this legitimate interest is not overridden by the interests or fundamental rights and freedoms of the data subject.</p>

	<ul style="list-style-type: none">• We make it clear at the point of first contact that we wish to send this type of marketing material, including via our Privacy Statement (www.concern.org.uk/privacy) and provided a clear opportunity to opt out of receiving this marketing material• We provide the option to opt out of future mailings on all further marketing materials that we send – and we have processes in place to ensure these wishes are recorded and complied with.		
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