**From Abigail Luthman from Dhanakosha:**

**Summary of the conversation with the Information Commissioners Office helpline February 2018:**

I emailed an enquiry asking whether we needed to seek explicit consent from all the existing folk on our database, the majority of whose details we have because they have booked a retreat with us. I’d found confusing information online, which seemed to suggest if we had been given the information as part of a transaction then that might be ok to contact them again, so I wanted some clarification. I was thinking particularly of the DK email news which we send to everyone whose email address we have unless they have unsubscribed via Mailchimp – and the postal newsletter and programme.

The guy I spoke to pointed me to the Privacy and Electronic Communications Regulations, which currently run alongside the Data Protection Act and will run alongside GDPR when that comes in. This covers email communication.

He suggested ‘soft opt in’ as the way round ‘explicit consent’ as we haven’t asked all those folk on the database specifically whether they are happy to be contacted by us. We can do from now onwards for new and returning folk obviously, but that leaves a lot of others who we’d like to stay in touch with.

There are 3 conditions that you need to meet in order to have a case for soft opt-in:

1.       You obtained the individuals details as part of a sale or service

2.       You are direct marketing about similar products to the original sale/service

3.       The recipient was given simple means of opting out initially and at every subsequent opportunity

This is encouraging, although when I look at it on the ICO site ‘What is soft opt-in’ it excludes charity fundraising…so a DK email promoting retreats is ok, but an email asking for money for a new shrine room wouldn’t be.

From the ICO website on the PECR: <https://ico.org.uk/for-organisations/guide-to-pecr/>

He warned that a retrospective explicit consent exercise (re-permissioning) to gain consent from all of a database would count as marketing in itself – so if you can’t justify soft opt-in then you also can’t contact everyone to ask them for explicit consent.

Some good news – if it’s someone’s work email they’ve given us [john.smith@marksandspencer.com](mailto:john.smith@marksandspencer.com) then we don’t need prior consent, but do need to give opt-out. If it’s a generic work email [info@marksandspencer.com](mailto:info@marksandspencer.com) then we can just contact that without any prior sale/service etc.

For postal communication there are different regulations and here the advice I received said to check Recital 47 which is about legitimate interest, as I understand it if we are using the data in a way that the data subject would reasonably expect. More here: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/legitimate-interests/>

From what I’ve read, it’s important to be able to justify what you have done basically – and to have had that signed off at the charity board level. You need to be able to emphasise that you’ve taken good care of people’s data, responded to requests not to contact folk and that any contact you have made can be justified at some level of legitimate interest/soft opt in. I think for both of us, the goodwill of those we are contacting means it is less likely that there will be challenges.

I’m going to suggest to DK that a few lines about the new laws are put in both the e-news and print news – to show we are aware, to say that we look after people’s data, to ask if they want to change their contact preferences and to explain why we want to stay in touch in different ways.